TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 508.

EDWARD WHITE, COMMISSIONER OF IMMIGRATION FOR THE PORT OF SAN FRANCISCO, PETITIONER,

vs.

CHIN FONG.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR CERTIORARI FILED AUGUST 21, 1919.
CERTIORARI AND RETURN FILED DECEMBER 22, 1919.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 506.

DWARD WHITE, COMMISSIONER OF IMMIGRATION FOR THE PORT OF SAN FRANCISCO, PETITIONER,

vs.

CHIN FONG.

N WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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No. 3180. United States Circuit Court of Appeals for the Ninth Circuit.

CHIN FONG, APPELLANT,
vs.
WARD WHITE, AS COMMISSIONER OF IMMIGRATION FOR the port of San Francisco, appellee.

Transcript of record.

pon appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Names of attorneys.

For petitioner and appellant:
GEO. A. MCGOWAN, Esq., San Francisco, California.
For respondent and appellee:
JOHN W. PRESTON, Esq., U. S. attorney, and CASPAR A. ORNBAUN, Esq., asst. U. S. attorney.

the District Court of the United States, in and for Northern District of California, Southern Division.

16,205.

In the matter of the application of Chin Fong, on habeas corpus.

Praecipe for transcript on appeal.

o the clerk of said court:

SIR: Please make up transcript of appeal in the above-entitled se, to be composed of the following papers to wit:

1. Petition for writ of habeas corpus (excluding exhibit) and nendment thereto.
2. Order to show cause.
3. Return of respondent.
4. Judgment and order dismissing and denying petition for writ.
5. Exceptions reserved.
6. Stipulation and order approving statement of the case and agreed statement of facts with respect thereto.
7. Notice of appeal.
8. Petition for appeal.
9. Order allowing appeal and releasing on bond.
10. Citation, original and copy.
11. Orders extending time to docket case.
12. Stipulation and order regarding immigration record.
13. Appearance bond.

14. Clerk's certificate.
15. Assignment of errors.

GEO. A. McGOWAN,
Attorney for petitioner. [1*]

(Indorsed:) Due service and receipt of a copy of the within praecipe is hereby admitted this 29th day of August, 1917.

JOHN W. PRESTON,
U. S. Attorney, Northern District of California,
Attorney for Respondent.

Filed May 20, 1918. W. B. Maling, clerk. By C. W. Calbreath, deputy clerk. [2]

In the District Court of the United States, in and for the Northern District of the State of California, Division No. 1.

No. 16,205.

In the matter of Chin Fong (13,137½ ex S. S. "Persia," Dec. 23, 1913), on habeas corpus.

3 *Petition for Writ of Habeas Corpus.*

To Honorable Judge now Presiding in the Above-entitled Court:

Comes now Chin Guy Get, and files this, his petition for a writ of habeas corpus herein, upon behalf of Chin Fong, hereinafter referred to as the detained:

That the said detained is unlawfully imprisoned, detained, confined and restrained of his liberty, by Edward White, commissioner of immigration for the port of San Francisco, at the United States immigration station on Angel Island, in the county of Marin, State and Northern District of California, and within the Southern Division thereof;

That the said imprisonment, detention, confinement and restraint are illegal, and that the illegality thereof consists in this, to wit:

That it is claimed by the said commissioner that the said detained is a Chinese person and an alien, and not subject or entitled to admission into the United States under the terms and provisions of the acts of Congress of May 6th, 1882, July 5th, 1884, November 3d, 1893, and the act of April 29th, 1902, as amended and reenacted by section 5 of the deficiency act of [3] April 7th, 1914, which said acts are commonly known and referred to as the Chinese exclusion and restriction acts, and that he, the said commissioner, intends to deport the said detained away from and out of the United States to the Republic of China;

4 That the said commissioner claims that the said detained arrived at the port of San Francisco on or about the 23d day

* Page number appearing at foot of page of original certified Transcript of Record.

of December, 1913, on the S. S. "Persia," and thereupon made application to reenter the United States as a resident Chinese merchant lawfully domiciled therein, and that the application of the said detained to enter the United States as such merchant was denied by the said commissioner of immigration, and that an appeal was thereupon taken from the excluding decision of the said commissioner of immigration to the Secretary of the Department of Labor, and that the said Secretary thereafter dismissed the said appeal; that it is admitted by the said commissioner of immigration and the said Secretary that the said detained was admissible into the United States under the act of Congress approved February 20th, 1907, as amended by act of March 6th, 1910, commonly known as the general immigration laws thereof; that it is claimed by the said commissioner that in all of the proceedings had herein the said detained was accorded a full and fair hearing, and that the action of the said commissioner and the said Secretary was taken and made by them in the proper exercise of the discretion committed to them by the statutes in such cases made and provided, and in accordance with the regulations promulgated under the authority contained in said statutes.

But on the contrary your petitioner alleges upon his information and belief that the hearing and proceedings had herein, and the action of the said commissioner, and the action of the said [4]
Secretary, was and is in excess of the authority committed
5 to them by the said statutes and the said rules and regulations, and that the denial of the application of the said detained to re-enter the United States as a resident Chinese merchant and lawfully domiciled therein was and is an abuse of the authority committed to them by the said statutes in each of the particulars hereinafter set forth:

That the said detained was for more than a year prior to his departure from the United States a merchant and a member of the firm of Kwong Mow Lan & Company, which is and was a firm engaged in buying, selling and dealing in merchandise, at a fixed place of business at No. 8 Pell Street, in the Borough of Manhattan, city of New York, State of New York, and that he had been so engaged for more than one year prior to his departure from the United States for China upon said temporary visit; and that the said detained prior to his departure gave the names of two creditable witnesses other than Chinese, to wit: Israel P. Brand, of No. 207 Center Street, and John Delmonte, of No. 7 Burling Slip, both of the city of New York; and that in the furtherance of his intention to so depart from the United States the said detained departed through the port of San Francisco on the steamer "Nile" on or about the 23d day of November, 1912, and at the conclusion of said temporary visit to China the said detained returned to the United States through the said port of San Francisco, and thereupon presented and made application to the said commissioner to re-enter

the United States as such returning Chinese merchant, and the
6 said commissioner received said application and examined the same, causing the said store of Kwong Mow Lan & Co. to be examined, and found that the same was a genuine mercantile establishment, and such as is contemplated by the Chinese exclusion and restriction acts, and the two said credible witnesses other than Chinese, [5] Israel P. Brand and John Delmonte, were examined under oath and testified in substance and effect that the said detained had been such a Chinese merchant for more than one year prior to the date of his said departure for China, and that the examining immigration inspector reported that the said two white witnesses were credible witnesses, and further reported that the said detained had been such a merchant for more than one year prior to the date of his departure for China, and that during said time he had engaged in the performance of no manual labor of any kind or description whatsoever, save and excepting only such duties as were incumbent upon him in the conduct of his business as such merchant, and the report of the immigration inspector in charge of the Chinese division of the immigration service in the city of New York was in substance and effect that the mercantile status of the said detained for the year prior to his departure aforesaid for China had been established in full and complete compliance with the provisions of section 2 of the act of Congress of November 3d, 1893, entitled "An act to amend an act entitled 'An act to provide for the coming of Chinese persons into the United States,' approved May 5th, 1892,"

which said section prescribes the evidence necessary to be
7 presented by a Chinese person applying to re-enter the United States after a temporary absence therefrom as a Chinese merchant claiming a commercial domicile therein.

Your petitioner further alleges that notwithstanding the presentation of said evidence showing the mercantile standing of the said detained as hereinbefore set forth, the said commissioner of immigration denied the application of the said detained to re-enter the United States, the said denial not being based upon any deficiency in the evidence presented to establish the mercantile [6] status of the said detained for a year prior to his departure from this country for China, but on the contrary the denial of the said commissioner was based upon the conclusion and opinion of the said commissioner of immigration that the said detained had not established to the satisfaction of the said commissioner of immigration that his original entry into the United States had been accomplished in a lawful manner, and that the said detained was therefore illegally within the United States under and by virtue of the provisions of section 1 of the act of Congress of May 6th, 1882, as amended and added to by the act of Congress of July 5th, 1884, which said last-mentioned act was entitled, "An act to amend an act entitled 'An act to execute certain treaty stipulations relating to Chinese,' approved May 6th, 1882," and under and by virtue of the provisions of section 13 of the act of Congress of September 13th, 1888, entitled "An act to pr

hibit the coming of Chinese laborers to the United States."
8 And it is further claimed by the said commissioner of immigration that the legality of the residence of the said detained in the United States prior to his said departure upon said temporary visit to China had not been determined by any justice, judge, or commissioner of a court of the United States; and the said commissioner therefore held and contended that upon the application of the said detained to re-enter the United States he, the said commissioner of immigration had the right to determine the question of the mercantile status of the said detained for the year prior to his departure for China as in said section 2 provided, and in addition thereto had the right to determine the legality of the original entry of the said detained into the United States and also to determine the legality of the residence of the said detained in the United States prior to the said period of one year mentioned in said [7] section 2 of said act of November 3d, 1893, and that notwithstanding the compliance with the provisions of said section 2 by the said detained, the said commissioner of immigration denied the application of the said detained to re-enter the United States as a returning merchant having a commercial domicile therein, basing his said denial, however, upon the conclusion of the said commissioner that the original entry of the said detained into the United States in 1897 was illegal, for the reason that the said detained did not satisfactorily account to the said commissioner of immigration for the present whereabouts of the papers upon which the detained claimed to have been originally
9 admitted into the United States. That from the excluding decision of the said commissioner of immigration an appeal was taken to the Secretary of the Department of Labor and that the said Secretary of Labor affirmed the excluding decision of the said commissioner of immigration for the port of San Francisco.

Your petitioner therefore alleges, upon his information and belief, that the said action of the said commissioner of immigration and the said Secretary of Labor was in excess of their jurisdiction and the powers conferred upon them by statute, in this, that the said detained, having presented the evidence required by the said section 2 hereinbefore mentioned, it was the duty of the said commissioner of immigration and the duty of the said Secretary of Labor to have permitted the said detained to reenter the United States as such returning Chinese merchant, and that their excluding decision was in violation of and in excess of the statutory authority vested in them, in this, that the said section 2 of said act of November 3d, 1893, provides: "That the term 'merchant' as employed herein and the acts of which this is amendatory shall have the following meaning and none other." And that [8] the said detained having complied with the said act and having submitted the evidence required by the said section 2 and from the witnesses therein required, that the said commissioner of immigration and the said Secretary of Labor should have ordered and directed the readmission of the said detained into the United States, and that no other action would have

been in excess of and in violation of their statutory author-
10 ity. That for said reason their said excluding decisions are null and void and without effect.

Your petitioner further alleges upon his information and belief that the said Chin Fong entered the United States in a lawful manner during the year 1897 upon a merchant's paper issued under the provisions of section 6 of the act of Congress of May 6th, 1882, aforesaid, as amended and added to by the act of Congress of July 5th, 1884, and that to facilitate in establishing the issuance of the said certificate and as evidence that the said detained would become a merchant in the United States after his arrival thereat, he had prepared and forwarded to him in China papers from the firm of Young Wah Hong Company, of the city of New York, State of New York, showing that the said detained would become a merchant and a member of the said firm upon his entry into the United States.

And your petitioner further alleges upon his information and belief that there was no fraud practiced in his said entry into the United States or in his subsequent residence therein.

And your petitioner further alleges that the said detained has never had a hearing before competent and legal authority invested with power to determine the matter as to whether his prior residence in the United States was legal or otherwise, or whether the method of his original entry into the United States was legal [9] or otherwise, and in this connection your petitioner further alleges upon his information and belief that the action of the said
11 commissioner of immigration and of the said Secretary of Labor in determining and deciding that the said detained had originally entered the United States in an illegal manner was without any supporting evidence, and was and is an abuse of discretion, and was without their authority and jurisdiction, and was in violation of section 12 of the act of Congress of May 6th, 1882, aforesaid, and in violation of the terms of section 13 of the said act of Congress of September 13th, 1888.

That attached hereto and made a part hereof is a complete copy of the immigration record of the application of the said detained to depart from and return to the United States as a Chinese merchant, together with the evidence given in support of his application to reenter the United States, and that the same is filed separately herewith as Exhibit "A."

That it is the intention of the said commissioner of immigration to deport the said detained out of the United States on the steamer "Columbia," sailing from the port of San Francisco on or about the 2d day of June, 1917, at the hour of one o'clock p. m. of said day, and unless this court intervenes on behalf of the said detained, the said detained will on said date be deported out of and from the United States to the Republic of China.

Wherefore, your petitioner prays that a writ of habeas corpus may be granted herein, directed to the said Edward White, commissioner of immigration as aforesaid, commanding him to have the body of

he said detained before your honor at a time and place to be therein specified, to do and receive what shall then and there be com-
2 manded by this honorable court concerning him, together with the time and cause of his detention, and said writ, [10] and hat he may be restored to his liberty.

Dated San Francisco, California, May 24th, 1917.

CHIN GUY GET,
Petitioner.

GEO. A. MCGOWAN,
Attorney for Petitioner.

NITED STATES OF AMERICA,
State and Northern District of California, ss:

Chin Guy Get, being first duly sworn, deposes and says: That he is the petitioner named in the foregoing petition; that the same has been read and explained to him, and he knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters he believes it to be true.

CHIN GUY GET.

Subscribed and sworn to before me this 24th day of May, 1917.

[SEAL] HARRY L. HORN,
Notary Public in and for the City and County of San Francisco, State of California.

Due service and receipt of a copy of the within petition and order is hereby admitted this 29 day of May, 1917.

JNO. W. PRESTON,
U. S. Attorney, Northern District of California,
Attorney for Respondent.

CHAS. D. MAYER,
For Edward White, Commissioner of Immigration.

3 (Endorsed:) Filed May 25, 1917. W. B. Maling, clerk. By Lyle S. Morris, deputy clerk. [11]

In the District Court of the United States in and for the Northern District of the State of California, Division No. 1.

No. 16205.

In the matter of Chin Fong (13,137½ Ex. S. S. "Persia," Dec. 23, 1913), on habeas corpus.

Amendment to petition for writ.

Comes now the petitioner in the above-entitled action and files and presents this his amendment to the petition for a writ of habeas corpus on the file herein, i. e., by adding thereto on page 8 thereof,

after the paragraph which is concluded on line 16 of said page, the following paragraph:

Your petitioner alleges on his information and belief that the said detained has been for upwards of two and one-half (2½) years last past, and prior to the application for this writ of habeas corpus, a Chinese merchant, lawfully domiciled within the United States of America, and a member of the said firm of Quong Mow Lan & Company, which is and was a firm engaged in buying and selling and dealing in merchandise, at a fixed place of business, to wit, at No. 8 Pell Street, in the borough of Manhattan, city of New York, State of New York, and that during said time he has engaged
14 in the performance of no manual labor of any kind or description whatsoever, except what was incumbent upon him in his conduct as such merchant, and that the detained has been such a merchant, as aforesaid, during his residence within the United States, upon bond, until his surrender into custody, just prior to the presentation of the petition for a writ of habeas corpus herein.

Wherefore your petitioner prays judgment, as set forth in the original petition on file herein, of which the foregoing is an amendment.

Dated San Francisco, California, May 28th, 1917.

CHIN GUY GET,
Petitioner. [12]

UNITED STATES OF AMERICA,
State and Northern District of California, ss:

Chin Guy Get, being first duly sworn, deposes and says:

That he is the petitioner in the foregoing amendment to petition; that the same has been read and explained to him, and he knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters he believes it to be true.

CHIN GUY GET.

Subscribed and sworn to before me this 28th day of May, 1917.

[SEAL.] HARRY L. HORN,
Notary Public in and for the City and County of San Francisco, State of California.

15 (Endorsed:) Due service and receipt of a copy of the within amendment to petition is hereby admitted this 29 day of May, 1917.

JNO. W. PRESTON,
U. S. Attorney, Northern District of California,
Attorney for Respondent.
CHAS. D. MAYER,
For Edward White, Commissioner of Immigration.

Filed May 28, 1917. W. B. Maling, clerk. By Lyle S. Morris, deputy clerk. [13]

n the District Court of the United States in and for Northern District of the State of California, Division No. 1.

No. 16205.

n the matter of Chin Fong (13,137½ Ex. S. S. "Persia," Dec. 23, 1913), on habeas corpus.

Order to show cause.

Good cause appearing therefor, and upon reading the verified etition on file herein, it is hereby ordered that Edward White, commissioner of immigration for the port and district of San Franisco, appear before this court on the 2 day of June, 1917, at the our of 10 o'clock a. m. of said day, to show cause, if any he has, hy a writ of habeas corpus should not be issued as herein prayed or, and that a copy of this order be served upon the said commissioner.

16 And it is further ordered that the said Edward White, commissioner of immigration as aforesaid, or whoever, acting nder the orders of said commissioner, or the Secretary of Labor, hall have the custody of the said Chin Fong, are hereby ordered and irected to retain the said Chin Fong within the custody of the said ommissioner of immigration and within the jurisdiction of this ourt until its further order herein.

Dated San Francisco, California, May 28, 1917.

M. T. Dooling,
United States District Judge.

(Endorsed:) Filed May 28, 1917. W. B. Maling, clerk. By Lyle S. Morris, deputy clerk. [14]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 16205.

In the matter of Chin Fong, on habeas corpus.

Return to order to show cause.

Now comes Edward White, commissioner of immigration at the port of San Francisco, by Charles D. Mayer, immigrant inspector, and in return to the order to show cause, issued by the said court on the petition of Chin Guy Get for writ of habeas corpus, and to said petition admits, denies, and alleges as follows:

Denies that the said detained is unlawfully imprisoned, detained, confined and restrained, or unlawfully imprisoned or de-

17 tained or confined or restrained of his liberty by Edward

White, commissioner of immigration at the port of San Francisco, or otherwise, or at all.

As to the following allegation on page 2 of said petition, viz, "That it is admitted by the said commissioner of immigration and the said Secretary that the said detained was admissible into the United States under the act of Congress approved February 20th, 1907, as amended by the act of March 6th, 1910, commonly known as the general immigration laws thereof," respondent has no information or belief concerning the said allegation sufficient to enable him to answer the same, and basing his answer upon said lack of information, denies the same. And in this connection respondent alleges that the admissibility of the said detained has never been passed upon by a board of special inquiry as provided for by the said immigration [15] laws, and that the said detained is still subject to an investigation by said board.

Denies that the hearing and proceedings or hearing or proceedings had herein or the action of the said commissioner or the action of the said Secretary, was and is or was or is in excess of the authority committed to them by the statutes, rules, and regulations.

Further denies that the denial of the application of the said detained to reenter the United States as a resident Chinese merchant and lawfully domiciled therein was and is, or was or is, an abuse of the authority committed to them by the said statutes in
18 each or any of the particlars set forth in said petition.

Denies that the reports of the immigration inspector in charge of the Chinese division of the immigration service in the city of New York was in substance and effect, or in substance or effect that the mercantile status of the said detained for the year prior to his departure aforesaid for China had been established in full and complete compliance with the provisions of section 2 of the act of Congress of November 3d, 1893, or otherwise, or at all.

Denies that the said commissioner of immigration denied the application of the said detained to re-enter the United States for the reason that the said detained did not satisfactorily account to the said commissioner of immigration for the present whereabouts of the papers upon which the detained claimed to have originally been admitted into the United States. And in this connection respondent alleges that the said denial was based not only upon the failure of detained to produce said papers, but also upon the failure of the detained otherwise to satisfactorily show that his entry into the United States was lawful.

And as a further and separate answer in this connection, [16] respondent alleges that after a full and fair hearing was accorded the detained upon his application to reenter the United States, the commissioner of immigration found as follows:

13,137½,

In the matter of Chin Fong, SS. "Persia," December 23, 1913.

plication to Land as a Returning Merchant (viséed), New York.

FINDING AND DECREE.

The applicant applied for preinvestigation of his alleged status a merchant (Form 431), in December, 1911, but his application s denied by the Seattle office, and an appeal from that decision smissed by the bureau for the reason that it was satisfactorily own at that time that the applicant had fraudulently secured his iginal admission to the United States, it having been claimed by n that he entered this country at or near Niagara Falls, New ork, in 1897, on "merchant's papers" sent to him in China by the oung Wah Hong Company at New York. It was first claimed the applicant, in the present case, that he was admitted at iagara Falls in 1906, but when confronted with his previous stimony he denied the last-mentioned statement and reiterated the ar first mentioned as the date of his original entry, and stated at he was then admitted as a section six Canton merchant on pers secured by him in that city.

Niagara Falls was not a port of entry for Chinese in 1906, and e applicant has not satisfactorily accounted for the present whereouts of the papers on which he claims to have been admitted, so that it must be concluded that his domicile in this country was unlawful; and as the bureau has sustained the action of the Seattle office in refusing his application for Form 431, e applicant is denied admission and advised of his right of appeal.

Dated this 6th day of February, 1914.

(Signed) SAMUEL W. BACKUS,
Commissioner.

WHW/ASH.

And upon due consideration of the appeal to the Secretary of abor from the finding of the commissioner of immigration, the cting Secretary of Labor found:

o. 53,725/44. WASHINGTON, *March 6, 1914.*

In Re Case of Chin Fong.

I am satisfied that the action recommended by the bureau is the rrect one in this case.

The original entry of this man was obtained by fraud. He can ot predicate any right whatever upon the basis of fraud. The fact hat he has been permitted to [17] remain in this country constitutes o waiver of the right to deport him, and the fact that the Governent has not heretofore affirmatively exercised the authority to de-

port him, while it amounts to tentative permission to remain here, does not preclude or estop the Government from exercising its authority to deport or deny admission at any time. A different question would be presented were the facts such that it did not appear that the alien's original entry was fraudulent. No business he might engage in nor length of residence here can cure the fraud perpetrated by him in gaining admission in the first instance.

21 This case appears to be quite fairly within the Mack Fock decision which, in my opinion, is correct.

The recommendation that admission be denied is approved.

J. B. DINSMORE,
Acting Secretary.

JBD/G.

Denies that the action of the said commissioner of immigration and the said Secretary of Labor, or the commissioner of immigration or the Secretary of Labor was in excess of their jurisdiction and the powers conferred upon them by statute.

Denies that the excluding decision of the said commissioner of immigration was in violation of, or in excess of the statutory authority vested in him.

Denies that the said commissioner of immigration and the said Secretary of Labor, or the said commissioner of immigration or the said Secretary of Labor should have ordered and directed, or ordered or directed the readmission of the detained into the United States, and further denies that the said excluding decision or decisions are null and void, or null or void, and without effect.

Denies that Chin Fong entered the United States in a lawful manner during the year 1897 or at any other time upon a merchant's paper or otherwise.

Denies that there was no fraud practiced in the entry of the said detained into the United States or in his subsequent residence therein. [18]

Denies that said detained has never had a hearing before a competent and legal or competent or legal authority invested with

22 the power to determine the matter as to whether his prior residence in the United States was legal or otherwise, or whether the method of his original entry into the United States was legal or otherwise.

Denies that the action of the said commissioner of immigration and the Secretary of Labor or the said commissioner of immigration or the said Secretary of Labor in determining and deciding or determining or deciding that the said detained had originally entered the United States in an illegal manner was without any supporting evidence.

Further denies that said action was and is, or was or is, an abuse of discretion and was without their authority and jurisdiction or their authority or jurisdiction, and further denies that said action was in violation of section 12 of the act of Congress of May 6th 1882, or of any other act or in any way contrary to law.

As to the amendment to the petition on file herein, respondent in answering the same, denies that the said detained has been for upwards of two and one-half years last past and prior to the application for a writ of habeas corpus or otherwise or at all, a Chinese merchant lawfully domiciled within the United States of America, and a member of the firm of Kwong Mow Lan & Company or of any other firm or company domiciled or doing business in the United States of America.

As a further, separate, and distinct answer and defense to the petition on file herein, respondent alleges that on March 9th, 1914, a petition for writ of habeas corpus was filed on behalf of said detained in the above-entitled court; that a [19] demurrer was interposed to said petition, which said demurrer was sustained. That shortly thereafter, and on or about the 4th day of June, 1914, said detained filed an order allowing an appeal from the order of said court sustaining said demurrer, to the Supreme Court of the United States, and a mandate was issued from the Supreme Court of the United States and spread upon the minutes of the above-entitled court on June 7th, 1916, dismissing said appeal, and the above-entitled court ordered said applicant surrendered to the officers for deportation on or about the 1st day of July, 1916.

That although frequent requests were made on the part of the Government to have said detained surrendered, it was not until on or about May 24th, 1917, that said detained was surrendered to the Government officials.

That the petition for writ of habeas corpus now on file herein, covers no additional facts and raises no questions of fact or points of law other than those raised in the original petition for writ of habeas corpus which have already been determined by said court, other than those already referred to in this answer.

Wherefore, respondent prays that said petition for a writ of habeas corpus be denied, and the order to show cause be discharged and that said alien be remanded to the custody of the respondent for deportation, as provided for in said warrant of deportation heretofore issued by the Secretary of Labor of the United States and for such other and further relief as to this court seems just and equitable.

JNO. W. PRESTON,
United States Attorney.
CASPER A. ORNBAUN,
Assistant U. S. Attorney,
Attorneys for Respondent. [20]

UNITED STATES OF AMERICA,
Northern District of California,
City and County of San Francisco, ss:

Charles D. Mayer being first duly sworn, deposes and says: That he is a Chinese and immigrant inspector connected with the Immigration Service for the port of San Francisco, and has been specially

directed to appear for and represent the respondent, Edward White commissioner of immigration, in the within entitled matter; that he is familiar with all the facts set forth in the within return to petition for writ of habeas corpus and knows the contents thereof that it is impossible for the said Edward White to appear in person or to give his attention to said matter; that of affiant's own knowledge the matters set forth in the return to the petition for writ of habeas corpus are true, excepting those matters which are stated on information and belief, and that as to those matters he believes it to be true.

CHARLES D. MAYER.

Subscribed and sworn to before me this 7th day of June, 1917.

[SEAL.] T. L. BALDWIN,
Deputy Clerk, U. S. District Court,
Northern District of California.

25 (Endorsed:) Presented in open court and filed June 7th 1917. W. B. Maling, clerk. By Lyle S. Morris, deputy. [21

At a stated term of the District Court of the United States, for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Thursday, the 7th day of June, in the year of our Lord one thousand nine hundred and seventeen. Present: The Honorable M. T. Dooling, Judge.

No. 16,205.

In the matter of Chin Fong on habeas corpus.

Order denying petition for writ of habeas corpus.

This matter came on regularly this day for hearing of the order to show cause as to the issuance of a writ of habeas corpus herein. C. A. Ornbaun, Esq., assistant United States, was present for and on behalf of respondent and filed a return to said petition. Geo. A. McGowan, Esq., was present as attorney for and on behalf of petitioner and detained. On his motion, the court ordered that petitioner be and is hereby allowed to hereafter file a traverse to said return nunc pro tunc as of to-day, June 7th, 1917. Said matter was thereupon argued by said attorneys and submitted. After due consideration had thereon, further ordered that said petition for a writ of habeas corpus be, and the same is hereby denied and that the order to show cause be discharged accordingly. [22]

26 In the District Court of the United States, in and for the Northern District of the State of California, Division No. 1

16,205.

In the matter of Chin Fong (13,137½, Ex. S. S. "Persia," December 23, 1913), on habeas corpus.

Exceptions on behalf of petitioner.

Now comes Chin Fong, the petitioner and the detained in the above-entitled proceeding and does hereby except to the decision and order of the above-entitled court:

First.

In holding and deciding that the commissioner of immigration and the Secretary of Labor had jurisdiction in a proceeding of a Chinese alien seeking readmission into the United States as a Chinese merchant having a lawful domicile therein, to consider and determine in said admission proceeding whether the said Chinese alien had originally entered the United States in a legal manner, approximately fifteen years prior to his departure from the United States, on said temporary visit to China, and upon their deciding that said original entry was fraudulent to thus deprive and prevent the alien from having that fact investigated and determined by a justice, judge, or commissioner of a court of the United States.

Second.

In holding and deciding that the commissioner of immigration and the Secretary of Labor could deny the petitioner, a Chinese alien, reentry into the United States, after a temporary visit [23] to China, he having presented the testimony of two credible witnesses other than Chinese that he was engaged in business as a Chinese merchant, which business was conducted in his own name, and wherein he was engaged in buying, selling, and dealing in merchandise at a fixed place of business for more than one year prior to his departure for China, and that during said period of one year, he had engaged in the performance of no manual labor of any kind or description, save and except only such duties as were incumbent upon him in his conduct as such merchant, and that the said mercantile establishment had no prohibitive features, and was a bona fide mercantile establishment, and that his interest therein still continues.

Third.

In holding and deciding that an alien Chinese person, while at liberty under bond in a court proceeding to determine the legality of his claim of readmission into the United States, cannot be heard in a subsequent habeas corpus proceeding to assert a mercantile status pursued and continued during his release on bond, in defense of the Government's prior refusal to permit him to reenter the United States.

Fourth.

In holding and deciding that the detained was not entitled to a hearing before this court in this proceeding, upon the question
28 whether or not his original entry into the United States about fifteen years prior thereto, was legal or not.

Fifth.

In dismissing the order to show cause, and denying the petition for a writ of habeas corpus herein.

Dated June 7th, 1917.

GEO. A. MCGOWAN,
Attorney for Petitioner. [24]

The above and foregoing exceptions are hereby allowed.

Dated June 8th, 1917.

M. T. DOOLING,
United States District Judge.

Due service and receipt of a copy of the within exceptions and order allowing same is hereby admitted this 8th day of June, 1917.

JNO. W. PRESTON,
U. S. Attorney, Northern District of California,
Attorney for Respondent.

(Endorsed:) Filed Jun. 8, 1917. W. B. Maling, clerk. By Lyle S. Morris, deputy clerk. [25]

In the District Court of the United States, in and for the Northern District of California, Southern Division, No. 1.

16,205.

In the Matter of Chin Fong (13,137½, Ex. S. S. "Persia," December 23, 1913), on habeas corpus.

29 *Stipulation and order approving statement of the case and agreed statement of facts with respect thereto.*

It is hereby stipulated and agreed by and between the counsel for the respective parties hereto that on the 7th day of June, 1917, the above-entitled matter came on regularly to be heard before the court sitting without a jury, George A. McGowan, representing the petitioner, and Caspar Ornbaum, assistant United States attorney in and for the Northern District of California representing Edward White, the commissioner of immigration of the port and district of San Francisco, and that the following is an agreed statement of fact or statement of the case in the above-entitled matter, that is to say:

This matter herein being a hearing upon the return to an order to show cause why a writ of habeas corpus should not issue in pur

uance to the prayer contained in the petition for a writ of habeas orpus filed herein, the assistant United States attorney presented nd filed the return to the order to show cause of the said Edward White, commissioner of immigration, as aforesaid. A hearing was hen had upon the issues joined wherein judgment was asked for pon the record upon behalf of the petitioner, and the petitioner further offered to prove certain facts through witnesses to the court, which offer was denied, and after argument by counsel the court took [26] the matter under advisement, and thereupon, to wit: on the seventh day of June, 1917, rendered its decision dismissing the order to show cause, and denying the application for a writ of habeas corpus as prayed for in the said petition.

That during the proceedings in said matter and during the hearing thereof certain motions and offers were made by the petitioner and certain rulings were made by the court, all of which will more fully appear from the record of the proceedings had in said matter, which beginning immediately upon the filing of the return in open court and containing all of the proceedings in evidence given and introduced in said matter is as follows:

Mr. McGOWAN. It is stipulated by and between counsel for the petitioner and the respondent, that the immigration record consisting of Exhibit "A" attached to the petition on file herein as supplemented by the proceedings before the Department of Labor at Washington as set forth in the return herein constitutes and is the record of the proceedings upon behalf of the detained Chin Fong to reenter the United States as the same was had and had theretofore taken place before the immigration authorities of the United States of America, and by consent of both parties the said record and proceedings were introduced in evidence.

Mr. ORNBAUM. That is the understanding.

Mr. McGOWAN. Upon behalf of the petitioner we now desire to ask for the judgment of this court discharging the petitioner from custody upon the pleadings and the record upon the following grounds:

First. That the commissioner of immigration and the Secretary of Labor are without jurisdiction in a proceeding of a Chinese alien seeking readmission into the United States as a Chinese merchant having a lawful domicile therein to consider and determine in said admission proceedings whether said Chinese alien had [27] originally entered the United States in a legal manner, approximately fifteen years prior to his departure from the United States on said temporary visit to China, and upon their deciding that said original entry was fraudulent, to thus deprive and prevent the alien from having that fact investigated and determined by or before a justice, judge or commissioner of a court of the United States, all as shown by the immigration record herein.

Mr. ORNBAUM. The respondent resists the motion.

The COURT. The motion so far as it is based upon the ground indicated will be denied.

Mr. McGowan. The petitioner reserves an exception.

(Exception No. 1.)

Mr. McGowan. We ask for judgment secondly upon the ground that the commissioner of immigration and the Secretary of Labor cannot deny the petitioner, a Chinese alien, reentry into the United States, after a temporary visit to China, he having presented the testimony of two credible witnesses other than Chinese, that he was engaged in business as a Chinese merchant, which business was conducted in his own name, and wherein he was engaged in buying selling and dealing in merchandise at a fixed place of business for more than one year prior to his departure for China, and
32 that during said period of one year, he had engaged in the performance of no manual labor of any kind or description save and except only such duties as were incumbent upon him in his conduct as such merchant, and that the said mercantile establishment had no prohibitive features, and was a bona fide mercantile establishment, and that the interest of the detained therein still continues, all as shown by the immigration record herein.

Mr. Ornbaum. The respondent resists the motion.

The Court. The motion so far as it is based upon the ground indicated is denied. [28]

Mr. McGowan. The petitioner reserves an exception.

(Exception No. 2.)

Mr. McGowan. It appears from the return of the respondent that the petitioner in this matter was at liberty upon bail, after applying to reenter the United States, from about the 4th day of June, 1914 up to shortly before he was surrendered into custody prior to the commencement of this present proceeding and supplementing the facts now of record and in evidence before the court, we desire to present suitable and competent testimony for the purpose of showing that during said time this detained was engaged in business in New York as a merchant following an exempt status as a Chinese merchant in the same manner and in the same way as he had been doing prior to his departure on a temporary visit to China.

33 Mr. Ornbaum. The respondent objects to the reception of evidence of that kind, claiming it is entirely immaterial, incompetent, and irrelevant.

The Court. The objection will be sustained.

Mr. McGowan. The petitioner reserves an exception.

Mr. McGowan. We now desire to ask upon behalf of this petitioner that this court accord us a hearing in this present proceeding upon the question whether or not the detained's original entry into the United States about fifteen years ago was legal or not. We now have competent evidence to present to show that this said entry was in a legal manner.

Mr. Ornbaum. The respondent submits that the court is without jurisdiction to receive evidence upon that point.

The COURT. The court denies such a hearing as requested, holding that that question was and is for the immigration officers to determine.

Mr. MCGOWAN.—The petitioner reserves an exception.

(Exception No. 4.) [29]

Mr. MCGOWAN. There is nothing further to present.

Mr. OEHRAUN. The Government rests.

The COURT. The order to show cause will be dismissed and the petition for a writ of habeas corpus denied.

Mr. MCGOWAN. The petitioner reserves an exception.

34 (Exception No. 5.)

The undersigned attorneys for the respective parties hereto do hereby stipulate and agree that the foregoing is and does constitute the agreed statement of facts or statement of the case in the above-entitled matter, and we hereby agree to the statement and the allowance and approval of same by the Judge of the above-entitled court.

Dated San Francisco, California, January 24th, 1918.

GEO. A. MCGOWAN,
Attorney for Petitioner and Appellant.
JNO. W. PRESTON,
Attorney for Respondent and Appellee.

Upon reading and filing the foregoing stipulation, it is hereby ordered that the statement of the case or agreed statement of facts as recited in the foregoing stipulation is hereby settled, allowed and approved as therein set forth.

Dated San Francisco, California, January 24, 1918.

M. T. DOOLING,
United States District Judge.

(Endorsed:) Filed Apr. 8, 1918. W. B. Maling, clerk. By C. M. Taylor, deputy clerk. [30]

35 In the District Court of the United States, in and for the Northern District of the State of California, Southern Division, Division No. 1.

In the Matter of Chin Fong (13,137½, Ex. S. S. "Persia," December 23, 1913), on habeas corpus.

Notice of appeal.

To the clerk of the above-entitled court and to the Honorable John W. Preston, United States Attorney for the Northern District of California.

You and each of you will please take notice that Chin Fong, the petitioner and the detained, above named, does hereby appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit

thereof, from the *other* made and entered herein on the 7th day of June, 1917, denying the petition for a writ of habeas corpus filed herein.

Dated at San Francisco, California, June 7th, 1917.

GEO. A. McGOWAN,
Attorney for Petitioner and Detained and Appellant. [31]

In the District Court of the United States, in and for the Northern District of the State of California, Southern Division, Division No. 1.

In the Matter of Ching Fong (13,137½, Ex. S. S. "Persia," December 23, 1913), on habeas corpus.

36 *Petition for appeal.*

Now comes Chin Fong, the petitioner, the detained and the appellant herein, and says:

That on the 7th day of June, 1917, the above-entitled court made and entered its order denying the petition for a writ of habeas corpus, as prayed for, on file herein, in which said order in the above-entitled cause certain errors were made to the prejudice of the appellant herein, all of which will more fully appear from the assignment of errors filed herewith.

Wherefore this appellant prays that an appeal may be granted in his behalf to the Circuit Court of Appeals of the United States, for the Ninth Circuit thereof, for the correction of the errors so complained of, and further, that a transcript of the record, proceedings, and papers in the above-entitled cause, as shown by the praecipe, duly authenticated, may be sent and transmitted to the said United States Circuit Court of Appeals, for the Ninth Circuit thereof; and further, that the said detained be admitted to bail during the pendency of the appeal herein, upon giving a bond before a commissioner of this court, in the sum of fifteen hundred dollars ($1500) conditioned that he will return and surrender himself [32] in execution of whatever judgment may be finally entered herein.

Dated at San Francisco, California, June 7th, 1917.

GEO. A. McGOWAN,
Attorney for Petitioner, Detained and Appellant. [33]

37 In the District Court of the United States, in and for the Northern District of the State of California, Southern Division, First Division.

In the matter of Chin Fong (13,137½ Ex. S. S. "Persia," December 23, 1913), on habeas corpus.

Assignment of errors.

Comes now Chin Fong, by his attorney, George A. McGowan, Esquire, in connection with his petition for an appeal herein, assig

e following errors, which he avers occurred upon the trial or aring of the above-entitled cause, and upon which he will rely, pon appeal to the Circuit Court of Appeals for the Ninth Circuit, wit:

First. That the court erred in denying the petition for a writ of abeas corpus herein.

Second. That the court erred in holding that it had no jurisdiction o issue a writ of habeas corpus, as prayed for in the petition herein.

Third. That the court erred in not holding that the allegation ontained in the petition herein for a writ of habeas corpus were ufficient in law to justify the granting and issuing of a writ of abeas corpus as prayed for in said petition.

Fourth. That the court erred in not holding that the commissioner f immigration and Secretary of Labor acted beyond their [34] tatutory authority and without jurisdiction in denying the application of the detained to reenter the United States, he having 38 established to their satisfaction his status as a Chinese merchant for one year prior to his departure for China.

Fifth. *The* the court erred in holding that it was within the statutory authority and within the jurisdiction of the said commissioner and the said Secretary of Labor, to examine into the legality of the residence of the said detained within the United States prior to the one year immediately preceding his departure upon said temporary visit to China.

Sixth. That the court erred in holding that the detained could not be permitted to urge his mercantile status acquired during his release on bond in defense of his present right of residence in the United States.

Wherefore, the appellant prays that the judgment and order of the United States District Court in and for the Northern District of the State of California, made and entered herein in the office of the clerk of the said court on the 7th day of June, 1917, discharging the order to show cause and dismissing the petition for a writ of habeas corpus be reversed, and that this cause be remitted to the said lower court with instructions to discharge the said Chin Fong from custody, or grant him a new trial before the lower court, by directing the issuance of a writ of habeas corpus, as prayed for in said petition.

Dated San Francisco, California, June 7th, 1917.

GEO. A. McGOWAN,
Attorney for Appellant.

Due service and receipt of a copy of the within notice and 39 petition for appeal and assignment of errors is hereby admitted this 8th day of June, 1917.

JNO. W. PRESTON,
U. S. Attorney, Northern District of California,
Attorney for Respondent.

(Endorsed:) Filed Jun. 8, 1917. W. B. Maling, clerk. By Lyle S. Morris, deputy clerk. [35]

In the District Court of the United States in and for the Northern District of the State of California, Southern Division, First Division.

No. 16,205.

In the matter of Chin Fong (13,137/½ Ex. S. S. "Persia," December 23, 1913), on habeas corpus.

Order allowing petition for appeal (and releasing on bond).

On this 7th day of June, 1917, come Chin Fong, the detained herein, by his attorney, George A. McGowan, Esquire, and having previously filed herein, did present to this court his petition, praying for the allowance of an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, intended to be urged and prosecuted by him, and praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had in the premises as may seem proper.

40 On consideration whereof the court hereby allows the appeal herein prayed for, and orders execution and remand stayed pending the hearing of the said case in the United States Circuit Court of Appeals for the Ninth Circuit, that the appellant may be released upon bond in the sum of one thousand five hundred dollars ($1,500), and that he remain within the United States and render himself in execution of whatever judgment is finally entered herein at the termination of said appeal, and that the United States marshal for this ditsrict is authorized to take [36] the detained into his custody for the purpose of effecting his release upon said bond.

Dated San Francisco, California, June 8th, 1917.

M. T. Dooling,
U. S. District Judge.

Due service and receipt of a copy of the within order allowing appeal and releasing on bond is hereby admitted this 8th day of June, 1917.

Jno. W. Preston,
U. S. Attorney, Northern District of California,
Attorney for Respondent.

(Endorsed:) Filed Jun. 8, 1917. W. B. Maling, clerk. By Lyle S. Morris, deputy clerk. [37]

Certificate of clerk U. S. District Court to transcript on appeal.

I, Walter B. Maling, clerk of the District Court of the
41 United States for the Northern District of California, do hereby certify that the foregoing 55 pages, numbered from

to 55, inclusive, contain a full, true, and correct transcript of rtain records and proceedings in the matter of Chin Fong. On beas corpus, No. 16,205, as the same now remain on file and of cord in the office of the clerk of said District Court, said transcript ving been prepared pursuant to and in accordance with the præe for record on appeal (copy of which is embodied in this tranript) and the instructions of Geo. A. McGowan, Esq., attorney for e petitioner and appellant herein.

I further certify that the cost for preparing and certifying the regoing transcript on appeal is the sum of twenty-one dollars and ghty-five cents ($21.85) and that the same has been paid to me by e attorney for the appellant herein.

Annexed hereto is the original citation on appeal, issued herein page 57).

In witness whereof, I have hereunto set my hand and affixed the al of said district court this 19th day of June, A. D. 1918.

[SEAL.]

WALTER B. MALING,
Clerk.

By C. M. TAYLOR,
Deputy Clerk.

CMT

[56]

2 *Citation on appeal—Original.*

NITED STATES OF AMERICA, ss.

The President of the United States, to Edward White, as commissioner of immigration for the port of San Francisco, and to John W. Preston, U. S. attorney for Northern District of California, his attorney, greeting:

You are hereby cited and admonished to be and appear at a nited States Circuit Court of Appeals for the Ninth Circuit, to be olden at the city of San Francisco, in the State of California, within hirty days from the date hereof, pursuant to an order allowing an ppeal, of record in the clerk's office of the United States District ourt for the Northern District of California, Southern Division, ivision No. 1, wherein Chin Fong is appellant, and you are apellee, to show cause, if any there be, why the decree rendered against he said appellant, as in the said order allowing appeal mentioned, hould not be corrected, and why speedy justice should not be done o the parties in that behalf.

Witness, the Honorable M. T. Dooling, United States District Judge for the Northern District of California, Southern Division, Div. No. 1, this 8th day of June, A. D. 1917.

M. T. DOOLING,
United States District Judge.

43 Due service of the within citation on appeal and a receipt of a copy thereof is hereby admitted this 8th day of June, 1917.

JNO. W. PRESTON,
U. S. Attorney, Northern District of California,
Attorney for Respondent.

This is to certify that a copy of the within citation on appeal wa this day lodged with the undersigned as the clerk of the above entitled court.

Dated June 8th, 1917.

[SEAL] W. B. MALING,

Clerk of the United States District Court in and for th Northern District of California, Southern Division Division No. 1.

By T. L. BALDWIN,

Deputy Clerk U. S. District Court, Northern District of California.

(Endorsed:) No. 16,205. United States District Court for th Northern District of California, Southern Division, Div. No. 1. I the matter of Ching Fong on habeas corpus, appellant, vs. Edwar White, as commissioner of immigration for the port of San Fran cisco, appellee. Citation on Appeal. Filed Jun. 8, 1917. W. B Maling, clerk. By C. W. Calbreath, deputy clerk. [57]

(Endorsed:) No. 3180. United States Circuit Court of Appeal for the Ninth Circuit. Chin Fong, Appellant, vs. Edward Whit as commissioner of immigration for the port of San Francisc appellee. Transcript of Record. Upon appeal from th
44 Southern Division of the United States District Court fo the Northern District of California, First Division.

Filed July 12, 1918.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By PAUL P. O'BRIEN,

Deputy Clerk.

In the United States Circuit Court of Appeals for the Nint Circuit.

CHIN FONG, APPELLANT,
vs.
EDWARD WHITE, COMMISSIONER OF IMMIGRATION OF THE port of San Francisco, appellee. } No. —

Stipulation omitting certain orders from printed transcript record.

It is hereby stipulated and agreed by and between counsel for t respective parties hereto that in the printing of the transcript record herein as the same is now on file with the clerk of this cou the following orders may be omitted from the printed copy of sa record:

Citation on appeal—Copy (Tr. page 38).

Bond for appearance on appeal (Tr. pages 39, 40).

45 Stipulations and orders extending time to docket case covering the following periods of time:

July 7, 1917, to August 6, 1917 (Tr. page 41).
August 4, 1917, to August 29, 1917 (Tr. page 42).
August 28, 1917, to September 1, 1917, to be printed (Tr. pages 43, 44).
September 1, 1917, to October 1, 1917 (Tr. page 45).
September 29, 1917, to October 29, 1917 (Tr. page 46).
October 29, 1917, to November 28, 1917 (Tr. page 47).
November 27, 1917, to December 27, 1917 (Tr. page 48).
December 27, 1917, to January 16, 1918 (Tr. page 49).
January 16, 1918, to February 15, 1918 (Tr. page 50).
February 14, 1918, to March 16, 1918 (Tr. page 51).
March 16, 1918, to April 15, 1918 (Tr. page 52).
April 15, 1918, to May 15, 1918 (Tr. page 53).
May 15, 1918, to June 14, 1918 (Tr. page 54).
June 14, 1918, to July 14, 1918 (Tr. page 55).
And Exhibit "A" filed with petition for writ may be omitted.
It is further stipulated and agreed that this stipulation be printed in the transcript of record.
Dated July 20, 1918.

GEO. A. McGOWAN,
Attorney for Petitioner and Appellant.
JNO. W. PRESTON,
United States Attorney for the Northern District of California,
Attorney for Respondent.

46 (Endorsed:) No. 3180. In the United States Circuit Court of Appeals for the Ninth Circuit. Chin Fong, appellant, vs. Edward White, commissioner of immigration of the port of San Francisco, appellee. Stipulation omitting certain orders from printed transcript of record. Filed Jul. 22, 1918. F. D. Monckton, clerk.

(Endorsed:) No. 3180. Chin Fong, appellant, vs. Edward White, as commissioner of immigration for the port of San Francisco, appellee. Printed transcript of record. Filed Mar. 6, 1919. F. D. Monckton, clerk.

47 United States Circuit Court of Appeals for the Ninth Circuit.

CHIN FONG, APPELLANT,
vs.
EDWARD WHITE, AS COMMISSIONER OF IMMIGRATION FOR THE port of San Francisco, appellee. } No. 3180

Upon appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Proceedings had in the United States Court of Appeals for the Ninth Circuit.

48 At a stated term, to wit, the October term, A. D. 1918, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court room thereof, in the city and county of San Francisco, in the State of California, on Thursday, the sixth day of March, in the year of our Lord one thousand nine hundred and nineteen.

Present:

The Honorable William B. Gilbert, senior circuit judge, presiding.
The Honorable William C. Morrow, circuit judge.
The Honorable William H. Hunt, circuit judge.

CHIN FONG, APPELLANT,
vs.
EDWARD WHITE, AS COMMISSIONER OF IMMIGRATION FOR THE port of San Francisco, appellee. } No. 3180

Order of submission.

Ordered, appeal in the above-entitled cause argued by Mr. George A. McGowan, counsel for appellant; Mr. Ben F. Geis, assistant United States attorney, counsel for the appellee, submitting the cause on brief, with leave to counsel for the appellee to file a brief within thirty (30) from date.

49 At a stated term, to wit, the October term, A. D. 1918, of the United States Circuit Court of Appeals for the Ninth Circuit held in the court room thereof, in the city and county of San Francisco, in the State of California, on Monday, the second day of June in the year of our Lord one thousand nine hundred and nineteen.

Present:

The Honorable William B. Gilbert, senior circuit judge, presiding.
The Honorable William C. Morrow, circuit judge.
The Honorable William H. Hunt, circuit judge.

CHIN FONG, APPELLANT,
vs.
EDWARD WHITE, AS COMMISSIONER OF IMMIGRATION AT THE port of San Francisco, appellee. } No. 3180.

Order directing filing of opinion and filing and recording of decree.

By direction of the Honorable William B. Gilbert, William W. Morrow, and William H. Hunt, circuit judges, before whom the cause was heard, ordered, that the typewritten opinion this day rendered by this court in the above-entitled cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court, in accordance with said opinion.

50 In the United States Circuit Court of Appeals for the Ninth Circuit.

CHIN FONG, APPELLANT,
vs.
EDWARD WHITE, AS COMMISSIONER OF IMMIGRATION AT the port of San Francisco, California, appellee. } No. 3180.

Opinion U. S. Circuit Court of Appeals.

Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Habeas corpus proceedings to secure the discharge of Chin Fong held by the commissioner of immigration for deportation as a Chinese person not entitled to reenter the United States under provisions of the exclusion act. Appeal from the order of the district court discharging the writ and remanding the petitioner for deportation.

George A. McGowan, attorney for appellant; Annette Abbott Adams, United States attorney, Ben F. Geis, assistant United States attorney, attorneys for appellee.

Before Gilbert, Morrow, and Hunt, circuit judges.

MORROW, Circuit Judge: The appellant, Chin Fong, is a Chinese person who arrived at the port of San Francisco on December 23, 1913, from China on the S. S. "Persia." He had previously 51 departed from the port of San Francisco for China on November 12, 1912, on the S. S. "Nile." He claimed the right to reenter the United States as a returning Chinese merchant. The provisions of the treaty between the United States and China, concluded in November, 1880 (22 Stat., 1826), excluded laborers, but provided that certain subjects of China, including merchants, might

"go and come of their own free will and accord." Chin Fong claimed the right of reentry under the provisions of section 2 of the Act of November 3, 1893 (28 Stat., 7), which provides:

"SEC. 2. * * * The term 'merchant' as employed herein and in the acts of which this is amendatory, shall have the following meaning and none other: A merchant is a person engaged in buying and selling merchandise at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant.

"Where an application is made by a Chinaman for entrance into to the United States on the ground that he was formally engaged in this country as a merchant, he shall establish by testimony of two credible witnesses other than Chinese the fact that he conducted such business as hereinbefore defined for at least one year before his departure from the United States, and that during such year he was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant, and in default of such proof shall be refused landing."

Pursuant to law the Department of Labor has prescribed certain rules governing the admission of Chinese; among others a rule of procedure for those claiming the right to reenter the United States as merchants previously domiciled in the United States as such.

Subdivision 11 of rule 15 of such rules provides as follows:

52 "SUBD. 11. Proof of mercantile status.—Chinese applying for preinvestigation under the terms of this rule, or for admission without having taken advantage of the rule, on the ground of having been domiciled in the United States as merchants, shall be required to establish to a reasonable certainty that they are actually owners of the business claimed or members of the firm owning such business, with proofs of the amounts actually paid for their respective interests and the times at which such payments were made. In no case should the claim of mercantile status be allowed unless inspection of the alleged mercantile establishment shows a bona fide capital and stock, the latter commensurate with the former and with the number of partners claimed."

In the appellant's statement made to the officers of immigration upon his arrival at the port of San Francisco in December, 1913, he claimed to be a member of the business house of Kwong Mow Lan & Co., at No. 8 Pell Street, in New York City. The papers were accordingly forwarded to the commissioner of immigration in New York City for an investigation of that claim. Inspector Sisson, in charge of the Immigration Service in the New York office, reported the appellant's status as a merchant in New York City as follows:

"Referring to your letter of the 2nd instant, No. 13137½, I return herewith papers in the case of Chin Fong ex S. S. "Persia," December 23, 1913, applying for admission at your port as a merchant and

ember of the firm of Kwong Mow Lan & Co., No. 8 Pell St., New ork City.

"In connection with this case, would state that our records show at this applicant filed an application for a return certificate as a erchant and member of the above firm in this office on December 1911, and that the said application was given unfavorable consid- ation by the commissioner of immigration at Seattle, Washington, nder date of January 18, 1912, and I have requested the Seattle fice to forward to you the original record. In view of the fact, owever, that while this application was denied in January, 1912, e did not depart from the United States until November 23, 1912, further investigation has been made covering this period, and ttached to the record will be found in triplicate the sworn state- ent of Chin Fong, the manager of the firm, together with those f the statutory witnesses, Messrs. Israel Brand and John L. Del- onte, both of whom are business men, and so far as this office nows, reputable.

"From the examination of this applicant conducted at your port is noted that he claims to have been first admitted to the United States in K. S. 32 (1906) at Niagara Falls as a section 6 Can- 3 ton merchant, and further that his certificate was lost at the time the firm of Yung Wah Tong was moving in the fifth or ixth month of S. T. 1 (1909) from No. 32 Mott St. to 33 Pell St. Niagara Falls was not a port of entry for Chinese in K. S. 32 (1906), nd consequently he could not have been admitted through that port. Further the firm of Quong Yuen Shing & Co. has occupied the remises at No. 32 Mott St. for many years last past, as is also the ase with the firm of Chong Lung & Co. at 33 Pell St.

"By reference to the statement of this applicant made before this ffice on January 3, 1912, which will form a part of the record to e forwarded to you by the Seattle office, it will be noted that Chin Fong testified he was first admitted to the United States in K. S. 22, 11th month (Dec. 1896–January, 1897), at Niagara Falls, upon a merchant paper which had been forwarded to him by the firm of Young Wah Hong & Co., No. 33 Mott St., and that he continued in business with said firm for a period of about six years, which would be until 1902 or 1903, when the firm went out of existence.

"Kwong Mow Lan & Co. are engaged in manufacturing cigars at No. 8 Pell St., where they also dispose of them at retail as well as wholesale, and it is believed to be a bona fide establishment."

Upon this report and other testimony taken by the immigration officers in San Francisco, the commissioner of immigration at that port made the following finding and decree:

"Finding and Decree.—The applicant applied for preinvestigation of his alleged status as a merchant (Form 431) in December, 1911, but his application was denied by the Seattle office, and an appeal from that decision dismissed by the bureau for the reason that it was satisfactorily shown at that time that the applicant had fraudu-

lently secured his original admission to the United States, it having been claimed by him that he entered this country at or near Niagara Falls, New York, in 1897, on 'merchant's papers' sent to him in China by the Young Wah Hong Company at New York. It was first claimed by the applicant in the present case that he was admitted at Niagara Falls in 1906, but when confronted with his previous testimony he denied the last-mentioned statement and reiterated the year first mentioned as the date of his original entry and stated that he was then admitted as a section six Canton merchant on papers secured by him in that city.

"Niagara Falls was not a port of entry for Chinese in 1906, and the applicant has not satisfactorily accounted for the present whereabouts of the papers on which he claims to have been admitted, so that it must be concluded that his domicile in this country was unlawful; and as the bureau has sustained the action of the Seattle office in refusing his application for Form 431, the applicant is denied admission and advised of his right of appeal."

54 An appeal from this decision was taken to the Secretary of Labor, who approved the decision of the commissioner of immigration. The finding of the Acting Secretary of Labor was as follows:

WASHINGTON, *March 6, 1914.*

(In Re Case of Chin Fong.)

I am satisfied that the action recommended by the bureau is the correct one in this case.

The original entry of this man was obtained by fraud. He can not predicate any right whatever upon the basis of fraud. The fact that he has been permitted to remain in this country constitutes no waiver of the right to deport him, and the fact that the Government has heretofore affirmatively exercised the authority to deport him, while it amounts to tentative permission to remain here, does not preclude or estop the Government from exercising its authority to deport or deny admission at any time. A different question would be presented were the facts such that it did not appear that the alien's original entry was fraudulent. No business he might engage in nor length of residence here can cure the fraud perpetrated by him in gaining admission in the first instance.

This case appears to be quite fairly within the Mack Fock decision which, in my opinion, is correct.

The recommendation that admission be denied is approved.

J. B. DINSMORE,
Acting Secretary.

JBD/G.

The appellant thereupon applied to the District Court for a writ of habeas corpus, which was denied. (Ex parte Chin Fong, 213 Fed. 288.) An appeal was then taken to the Supreme Court of the United States upon the theory that the construction of the treaty of Novem

ber 17, 1880, was involved. The appeal was dismissed on the ground that Chin Fong was seeking to reenter the United States under section 2 of the act of November 3, 1893, and not under the treaty of 1880, and that——

"where the right of a person of Chinese descent to enter the United States depends upon the statutes regulating Chinese immigration and not upon the construction of provisions of treaties relating thereto, a direct appeal would not lie to the Supreme Court under section 238 of the Judicial Code from a judgment dismissing a petition for habeas corpus." (Chin Fong *vs.* Backus, 241 U. S., 1.)

55 By permission of the District Court, the appellant was then permitted to again file a petition for a writ of habeas corpus, basing his claim for relief upon his alleged rights vested in him by the statute and not upon rights previously supposed to flow from the treaty with China.

The appellant contends that he has met every requirement of the statute providing the terms and conditions upon which he, as a Chinese merchant as described in section 2 of the act of November 3, 1893 (28 Stat., 7), domiciled in the United States, is entitled to reenter the United States—that is to say, he has established by the testimony of two credible witnesses other than Chinese, that he was a merchant and a member of the firm of Kwong Mow Lan & Co., No. 8 Pell Street, in New York City; that such location was his fixed place of business for at least one year before his departure from the United States in November, 1912, and that during such year he was not engaged in the performance of any manual labor except such as was necessary in the conduct of said business as a merchant; that he is being excluded for reasons not mentioned in the statute or in any rule or regulation of the Department of Labor; that such exclusion is against the law, and is therefore an abuse of discretion on the part of the commissioner of immigration.

The evidence in the record fully supports the appellant's claim of a mercantile status in the United States prior to his departure therefrom in 1912.

56 The report of Inspector Sisson is that "Kwong Mow Lan & Co. are engaged in manufacturing cigars at No. 8 Pell Street, where they also dispose of them at retail as well as wholesale, and it is believed to be a bona fide establishment."

Referring to the findings and decree of the commissioner of immigration at San Francisco, excluding the appellant, we find that the reason for such exclusion is not that he was not a merchant but that "the applicant has not satisfactorily accounted for the present whereabouts of the papers on which he claims to have been admitted, so that it must be concluded that his domicile in this country was unlawful."

The papers here referred to by the commissioner are the papers upon which the applicant claims to have been admitted into the United States in 1896–1897 or 1906 and concerning which there was

some mistake as to whether it was 1896–1897 or 1906. There is
finding and decree by the commissioner as to whether the applica
was a merchant in New York City for at least one year before
departure for China in 1912 and there is no intimation or suggesti
that he was not such a merchant. The acting Secretary of Lab
in approving the decision of the commissioner of immigration d
so upon the ground that "The original entry of this man was
tained by fraud," but this was not the question submitted to t
commissioner of immigration or to the Secretary of Lab
57 for decision. The question was not whether the applica
was legally admitted in 1896–1897 or 1906. The question w
whether he had been a merchant in the United States at least o
year before his departure from the United States in 1912 (Ch
Fong *v.* Backus, 241 U. S., 1–5), and upon that question the evide
was all one way, establishing beyond controversy all the facts
quired by the statute and the rule of the Department of Labor
the effect that he was such a merchant at No. 8 Pell Street, N
York; that it had been his fixed place of business for at least o
year before his departure from the United States; that the busin
in which his firm was engaged was that of manufacturing ciga
that the cigars were disposed of at retail as well as wholesale and t
establishment was bona fide, and the witnesses by which these fa
were proven other than Chinese, were business men and so far
known to the inspector, were reputable men. This question so p
sented to the commissioner of immigration was not decided eith
by the commissioner or the Acting Secretary of Labor, but th
undertook to decide another question, namely, that the applica
had fraudulently secured admission into the United States either
1896–1897 or 1906, as a merchant defined in the Treaty of 1880.

The Supreme Court in this case (Chin Fong v. Backus, supra)
ferring to the definition of a "Merchant" as described in the trea
points out that "It was the definition of the statute acquired
China, not acquired in the United States, and, having been
quired in China, gave access to the United States and after acc
freedom of movement as citizens of the most favored nations" a
because the case as there (and here) presented did not involve
status of Chin Fong as a merchant under the treaty, but did invo
his status solely under the act of November 3, 1893 (28 Stat.,
the court held that it had no jurisdiction of the appeal.

58 The case of ex parte Mack Fock, 207 Fed., 696, referred to
the Acting Secretary of Labor as an authority supporting
decision is not in point. In that case, the application was that o
Chinese person who claimed to be a returning native-born Ameri
of Chinese descent. In support of that claim he presented a pa
purporting to be a certificate issued by Felix W. McGettrick, Uni
States commissioner at St. Albans, in the district of Vermont, on
12th of June, 1906, certifying that it had been adjudged by him t
said Mack Fock had a lawful right to be and remain in the Uni
States by reason of his being a citizen thereof. The question s

mitted to the commissioner at Seattle was whether or not Mack Fock was a native-born American. Upon examination the commissioner found that he was not and that he was in fact born in China. The commissioner thereupon ordered his exclusion upon the precise issue presented by the applicant for admission. It may be contended that in the present case the commissioner of immigration did in effect determine the question at issue when he concluded that appellant's original entry into the United States was unlawful and for that reason he was never lawfully domiciled in this country and that this conclusion is sufficient to overcome the specific finding that he was a merchant domiciled in this country for at least one year prior to his departure therefrom in 1912 and under that finding entitled to return under the act of November 3, 1893. But whether Chin Fong's original entry into the United States under the treaty was or was not lawful was a different question not presented in this case (Chin Fong v. Backus, supra) and one to be determined in a deportation proceeding before a different tribunal. See section 12 of the act of May 6th, 1882 (22 Stat., 581), as amended by the act of July 5, 1884 (23 Stat., 115), section 13 of the act of September 13, 1888 (25 Stat., 476), section 3 of the act of March 3, 1901 (31 Stat., 1093).

59 Our conclusion is that the appellant has been denied admission for a reason other than that connected with his status as a merchant under the act of November 3, 1893, and for that reason the order of exclusion is void. The judgment of the District Court is reversed with direction to discharge the appellant from custody.

(Endorsed:) No. 3180. United States Circuit Court of Appeals for the Ninth Circuit. Chin Fong, appellant, vs. Edward White, as commissioner, etc., appellee. Opinion. Filed June 2, 1919. F. D. Monckton, clerk, by Paul P. O'Brien, deputy clerk.

60 United States Circuit Court of Appeals for the Ninth District.

CHIN FONG, APPELLANT,
vs.
EDWARD WHITE, AS COMMISSIONER OF IMMIGRATION for the Port of San Francisco, Appellee. } No. 3180. Decree.

Appeal from the Southern Division of the District Court of the United States for the Northern District of California, First Division.

This cause came on to be heard on the transcript of the record from the Southern Division of the District Court of the United States for the Northern District of California, First Division, and was duly submitted:

On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the order of the said District Court in

this cause be, and hereby is, reversed, with direction to the sa District Court to discharge the appellant from custody.

(Endorsed:) No. 3180. United States Circuit Court of Appe for the Ninth Circuit. Chin Fong, appellant, vs. Edward White, commissioner, etc., appellee. Decree. Filed and entered June 1919. F. D. Monckton, clerk, by Paul P. O'Brien, depu clerk.

61 United States Circuit Court of Appeals for the Ninth Circuit.

CHIN FONG, APPELLANT,
vs.
EDWARD WHITE, APPELLEE. } No. 3180.

Order staying issuance of mandate.

Upon motion of Ben F. Geis, assistant United States attorney, a good cause appearing therefore, it is hereby ordered that the mand in the above-entitled cause be stayed for thirty (30) days from da

Dated San Francisco, Cal., August 1, 1919.

(Signed) WM. H. HUNT,
Circuit Judge

(Endorsed:) No. 3180. United States Circuit Court of Appe for the Ninth Circuit. Chin Fong, appellant, vs. Edward Whi appellee. Order staying issuance of mandate. Filed Aug. 1, 19 F. D. Monckton, clerk.

62 United States Circuit Court of Appeals for the Ninth Circ

CHIN FONG, APPELLANT,
vs.
EDWARD WHITE, AS COMMISSIONER OF IMMIGRATION for the port of San Francisco, appellee. } No. 3180.

Praecipe for transcript of record.

To the clerk of the said court.

SIR: Please make and furnish me with a certified printed transcr of the record (including the proceedings had in said Circuit Co of Appeals), and excluding all original exhibits, and not less th nine uncertified copies thereof, for use on an application to be m to the Supreme Court of the United States for the issuance o writ of certiorari under section 240 of the Judicial Code, in above-entitled cause, the said transcript to consist of a copy of following:

(1) Printed transcript of record on which the cause was heard said Circuit Court of Appeals, to which will be added a typewrit

copy of the following-entitled proceedings that were had, and of the papers that were filed in said Circuit Court of Appeals, viz:

(2) Order of submission, entered Mar. 6, 1919.
(3) Order directing filing of opinion, etc., entered June 2, 1919.
(4) Opinion, filed June 2, 1919.
(5) Decree, filed and entered June 2, 1919.
(6) Order staying issuance of mandate, etc., filed Aug. 1, 1919.
(7) Præcipe for transcript of record, filed Aug. 2, 1919.
(8) Certificate of clerk, U. S. Circuit Court of Appeals to said transcript.

(Signed) ANNETTE ABBOTT ADAMS,
United States Attorney, Counsel for Appellee.

Service of a copy of the within præcipe is hereby admitted this 1st day of August, A. D. 1919.

(Signed) GEORGE A. McGOWAN,
Counsel for Appellant.

(Endorsed:) No. 3180. Chin Fong, appellant, vs. Edward White, as commissioner of immigration, etc., appellee. Præcipe for transcript of record. Filed Aug. 2, 1919. F. D. Monckton, clerk.

63 United States Circuit Court of Appeals for the Ninth Circuit.

CHIN FONG, APPELLANT,
vs.
EDWARD WHITE, AS COMMISSIONER OF IMMIGRATION FOR THE port of San Francisco, appellee. } No. 3180.

Certificate of clerk U. S. Circuit Court of Appeals to record certified under section 3 of Rule 37 of the rules of the Supreme Court of the United States.

I, Frank D. Monckton, as clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing sixty-two (62) pages, numbered from and including 1 to and including 62, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, excluding all original exhibits, made pursuant to præcipe of counsel for the appellee, filed on the 2d day of August, A. D. 1919, and certified under section 3 of Rule 37 of the rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this 2d day of August, A. D. 1919.

[SEAL] F. D. MONCKTON,
Clerk.

64 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable the judges of the United States Circuit Court of Appeals for the Ninth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Chin Fong is appellant, and Edward White, as commissioner of Immigration for the port of San Francisco, is appellee, No. 3180, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Northern District of California, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States,
65 do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-fourth day of October, in the year of our Lord one thousand nine hundred and nineteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

66 File No. 27261. Supreme Court of the United States. No. 506, October Term, 1919. Edward White, commissioner of immigration for the port of San Francisco, vs. Chin Fong. Writ of certiorari.

Docketed. No. 3180. United States Circuit Court of Appeals for the Ninth Circuit. Filed Dec. 6, 1919. E. D. Monckton, clerk; by Paul P. O'Brien, deputy clerk.

67 In the Supreme Court of the United States.

OCTOBER TERM, 1919.

EDWARD WHITE, AS COMMISSIONER OF IMMIGRATION FOR THE port of San Francisco, petitioner,
v.
CHIN FONG. } No. 506.

Stipulation as to return to writ of certiorari.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of record now on file in the Supreme Court of the United States and petitioner's Exhibit "A" shall constitute the return of the clerk of the United

ıtes Circuit Court of Appeals for the Ninth Circuit to the writ of tiorari granted therein.

(Sgd.) ALEX. C. KING,
Solicitor General.

(Sgd.) GEO. A. McGOWAN,
Counsel for Respondent.

DECEMBER 6, 1919.

(Endorsed:) No. 3180. United States Circuit Court of Appeals r the Ninth Circuit. Chin Fong, appellant vs. Edward White, as mmissioner of immigration for the port of San Francisco, appellee, ed Dec. 6, 1919. F. D. Monckton, clerk, by Paul P. O'Brien, puty clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

CHIN FONG, APPELLANT,
vs.
DWARD WHITE, AS COMMISSIONER OF IMMIGRATION AT THE port of San Francisco, appellee. } No. 3180.

ertificate of clerk, U. S. Circuit Court of Appeals, to stipulation as to return to writ of certiorari from Supreme Court U. S.

I, Frank D. Monckton, as Clerk of the United States Circuit Court f Appeals for the Ninth Circuit, do hereby certify the next preeding page, to be a full, true, and correct copy of a "Stipulation as return to writ of certiorari," filed in the above-entitled cause on ıe 6th day of December, A. D. 1919, as the original thereof remains n file and of record in my office.

Attest my hand and the seal of the United States Circuit Court f Appeals for the Ninth Circuit, at the city of San Francisco, in he State of California, this 6th day of December, A. D. 1919.

[SEAL.]

F. D. MONCKTON,
Clerk.

By PAUL P. O'BRIEN,
Deputy Clerk.

9 (Copy.) B

[U. S. Department of Labor, Immigration Service. Immigration File No. 13137. Subject: Chin Fong. Mer. Vsd New York.]

EXHIBIT "A."

0 (Copy.)

ARRIVAL.

Number, 13137/1–2.
Name, Chin Fong.
Accompanied by ———.
Class, Mcht Vis.

Destination, New York.
Vessel, "Persia."
Date, Dec. 23, 1913.
Remarks, ———.
Reported unfavorably. (Signed) J. H. McCall, inspector (Date) Jany. 26, 1914.
Forwarded to law section. (Signed) Charles Mehan, inspector in charge. (Date) Jan. 26, 1914.
Disapproved. (Signed) W. H. Wilkinson, for law section. (Date) Feb. 6, 1914.
Excluded. (Signed) H. Edsell, acting commissioner. (Date) 2-6-14.
Appealed by Ralston & Richardson, Wash., D. C. (Date) Mar. 9.
Exclusion ordered. By department decision. (Date) Mar. 9/14.
Admitted ———. Deported ———. For Deportation & Detention Division. (Date) ———.
Certificate of identity, authorized by ———. (Date) ———.
Certificate of identity No. ———. Issued ———. (Date) ———.

71 (Copy.)

[WESTERN UNION TELEGRAM.]

Time filed, 3 p. m.

WASHINGTON, D. C., *March 7, 1914.*

Dedicant—Chin Fong.

(Signed) CAMINETTI.

March 7—3 p. m. J. M. Newman, watchman.
(Stamped) 9.15 p. m., 1914, Mar. 9.

72 In answering refer to No. 13137/1-2.

U. S. DEPARTMENT OF LABOR,
IMMIGRATION SERVICE,
OFFICE OF THE COMMISSIONER,
ANGEL ISLAND STATION, VIA FERRY POST OFFICE,
San Francisco, Cal., February 19, 1914.

COMMISSIONER GENERAL OF IMMIGRATION,
Washington, D. C.:

Transmitted herewith is the record on appeal in the case of Chin Fong, ex. S. S. "Persia," December 23, 1913. The applicant will be represented before the department by Attorneys Ralston and Richardson, who entered appearance in this case by telegram dated January 19, 1914.

The third copy of the record is being transmitted herewith for use of the attorneys of record, attention being invited to the fact that counsel for applicant has not yet had an opportunity to inspect the record, there being no local counsel in this case. It is requested that this duplicate copy be returned to the files of this office when it has served its purpose.

For the reasons given in the opinion of denial, pages 28 and 29 of the record, I have to recommend that the excluding decision be affirmed.

The following exhibit is enclosed, which please return:

Seattle, file No. 28,913.

Should the department's decision in this case require the deportation of the applicant, it is requested that this office be advised
73 on or before March 2, 1914; or on or before March 17, 1914, in order that he may be placed upon the next departing vessel of the line upon which he came to the United States.

(Exact copy as signed by Samuel W. Backus. Mailed Feb. 19, 1914. By A. H.)

Commissioner.

WHW/ASH

Inclosure No. 16807.

74 (Copy.)

[Treasury Department. Public Health Service. Form 8951.]

MEDICAL CERTIFICATE OF RELEASE.

PORT OF SAN FRANCISCO, CAL., *12/28/13* (*191*).

COMMISSIONER OF IMMIGRATION.

This is to certify that Chin Fong, 13137/1–2, age , native of China, who was held for observation and who arrived 12/23/13 (191), per S. S. "Persia," has been released today.

(Signed) C. W. JENKINS.
Asst. Surgeon P. H. S.

New Y.

75 (Copy.)

13137

1–2

Copy.
1.
2.
7.
7a.
18.
18a.
19.
20.
21.
25.
27.
Action sheet.

76 (Copy.)

Form 2512. ANGEL ISLAND, CAL., *Feb. 17, 1914.*

CHINESE INSPECTOR IN CHARGE,
Angel Island, Cal.

~~life~~[1]

SIRS I request that the photographer make copy photograph of applicant in case No. 13137/1-2 S. S. "Persia," arriving Dec. 23, 1913, to complete the record.

(Sgd.) A. HARRISON,
Inspector.

R. Lym.

FEB. 17, 1914.

Above request O. K.

(Signed) CHARLES MEHAN,
Chinese Inspector in Charge.

Received the above photograph this 17 day of Feb., 1914.

(Sgd.) A. HARRISON,
Inspector.

(TO BE MADE IN DUPLICATE.)

77 (Copy.)

In answering refer to
No. Personal.

U. S. DEPARTMENT OF LABOR,
IMMIGRATION SERVICE,
OFFICE OF THE COMMISSIONER,
ANGEL ISLAND STATION, VIA FERRY POST OFFICE,
San Francisco, Cal., February 14, 1914.

THE POSTAL-TELEGRAPH CABLE CO.,
Battery & Bush Streets, San Francisco, Cal.

GENTLEMEN: Kindly deliver to bearer, Mr. Charles E. Maynard, the sum of $20.00 which was telegraph to me from New York by Chin Yung.

Respectfully,

(Exact copy as signed by H. Edsell. Mailed Feb. 14, 1914, by A. H.)

HE/WM. *Acting Commissioner.*

[1] Cross of copy or life, as insert number of photographs desired.

(Copy)

[WESTERN UNION NIGHT LETTER.]

Duffy, 9.45 a. m., 2/12/14.
17 Night letter.

NEW YORK, *February 11, 1914.*

ommissioner EDSELL,
Angel Island, Cal.:
Following instructions of Attorney Ralston, I telegraph you to-
ay twenty dollars for Chin Fong board pending appeal.

CHIN YUNG.

3137

1-2
16/14.
K.
Sgd.) E. L. Kimmel.

(Copy.)

ANGEL ISLAND, *February 6, 1914.*

ALSTON AND RICHARDSON,
Attorneys-at-Law, Washington, D. C.:
Your telegram January 28. Chin Fong this day denied admis-
on. Immediate provision necessary to cover maintenance pending
ppeal. Deposit twenty dollars required.

EDSELL.

WHW/ASH 13137/1-2
Attest:

ACTING COMMISSIONER.

Commercial rate. Collect.

(Copy.)

n answering refer to No. 13137/1-2.

U. S. DEPARTMENT OF LABOR,
IMMIGRATION SERVICE,
OFFICE OF THE COMMISSIONER,
ANGEL ISLAND STATION, VIA FERRY POST OFFICE,
San Francisco, Cal., February 7, 1914.

CHINESE CONSUL GENERAL,
649 Kearny Street, San Francisco, Cal.

SIR: In accordance with rule 5 of the regulations governing the dmission of Chinese, approved Ap. 18, 1910, you are hereby notified hat Chin Fong, No. 13137/1-2, S. S. " Persia," arriving December 3, 1913, an alleged merchant viséed, has been refused a landing, and

that you will be permitted to examine the record in said case if you so desire.

Respectfully,

(Exact copy as signed by Samuel W. Backus. Mailed Feb. 7, 1914, by B.)

Commissioner.

CT/AAG

81 (Copy.)

Notice to rejected Chinese applicant, under rule 5.

No. 13137/1–2.
Chin Fong.
Merchant (Vie).
S. S. "Persia",
Dec. 23, 1913:

DEPARTMENT OF COMMERCE AND LABOR,
IMMIGRATION SERVICE,
Port of San Francisco, Cal., February 7, 1914.

You are hereby notified that your application for admission to the United States is denied. From this decision you have the right of appeal to the Secretary of Commerce and Labor. If you desire to appeal, you must notify the officer in charge at this port within two days of the receipt of this notice.

[TRANSLATION.]

(Five lines of Chinese characters.)

(Signed) SAMUEL W. BACKUS,
Commissioner.

CT

82 (Copy.)

U. S. IMMIGRATION SERVICE, CHINESE DIVISION,
San Francisco, Cal., 2–7, 1914.

CHIN FONG,
No. 13137/1–2, ex S. S. "Persia", *Dec. 23, 1913.*

Sir: You are hereby notified that after due consideration of your case the honorable commissioner of immigration has refused you admission to the United States.

There is reserved for you the right of appeal to the Secretary of the Department of Commerce and Labor through an attorney or reasonable representative. You may designate who shall be your representative in this matter, the name and address will be written below, and the party duly notified. Notice of appeal must be filed within two days.

Your signature in acknowledgment of all the foregoing is requested.

Respectfully,

(Signed) J. E. GARDNER.
(*Actg.*) *Inspector in Charge Chinese Division.*

Chan Kit, c/o Dan Sang Tong, 842 Grant Ave.
(Acknowledged) (Chinese signature), applicant.
Applicant notified by Robt. Lym, interpreter, 2–7, 1914, 4.00 p. m.
(Return this notice to Inspector in Charge, Chinese Division.)

U. S. DEPARTMENT OF LABOR, IMMIGRATION SERVICE.

OFFICE OF THE COMMISSIONER, ANGEL ISLAND STATION, VIA FERRY POST OFFICE, SAN FRANCISCO, CAL.

In answering refer to
No. 13137/1–2.

(Copy.)

In the matter of Chin Fong, S. S. "Persia," December 23, 1913. Application to land as a returning merchant (viseed), New York.

FINDING AND DECREE.

The applicant applied for preinvestigation of his alleged status as merchant (Form 431), in December, 1911, but his application was denied by the Seattle office, and an appeal from that decision dismissed by the bureau for the reason that it was satisfactorily shown at that time that the applicant had fraudulently secured his original admission to the United States, it having been claimed by him that he entered this country at or near Niagara Falls, New York, in 1897 on "merchant's papers" sent to him in China by the Young Wah Hong Company at New York. It was first claimed by the applicant, in the present case, that he was admitted at Niagara Falls in 1906, but when confronted with his previous testimony he denied the last-mentioned statement and reiterated the year first mentioned as the date of his original entry, and stated that he was then admitted as a section six Canton merchant on papers secured by him in that city.

Niagara Falls was not a port of entry for Chinese in 1906, and the applicant has not satisfactorily accounted for the present whereabouts of the papers on which he claims to have been admitted, so that it must be concluded that his domicile in this country was unlawful; and as the bureau has sustained the action of the Seattle office in refusing his application for Form 431, the applicant is denied admission and advised of his right of appeal.

Dated this 6th day of February, 1914.

(Signed) SAMUEL W. BACKUS,
Commissioner.

WHW/ASH.

85 (Copy.)

ANGEL ISLAND, CAL., *Jan. 28, 1914.*

RALSTON AND RICHARDSON,
Attorneys-at-law, Washington, D. C.:

Your telegram twenty-eight instant. Case Chin Fong under consideration. Decision probably reached within week.

BACKUS.

WHW/ASH. 13137/1-2.
Attest:

COMMISSIONER.

Commercial rate. Collect.
(Exact copy as signed by Samuel W. Backus. Mailed Jan. 28, 1914, by B.)

86 (Copy)

[Western Union Telegram.]

Received at S. E. corner Pine and Montgomery Sts., San Francisco.
W283ch ed 12. Duplicate of telephoned telegram.
Telephone No. ———
Telephoned to AMD
Time 3.20 p. m.
By N. C. to be Mld.

WASHINGTON, D. C., *Jan. 28, 1914.*

COMMISSIONER OF IMMIGRATION,
San Francisco, Calif.:

Kindly advise status Chin Fong arrived December 23, S. S. "Persia."

RALSTON AND RICHARDSON.
3.12 p. m.

Law.
Chd. 13137/1-2.

87 (Copy)

U. S. DEPARTMENT OF LABOR, IMMIGRATION SERVICE.

OFFICE OF THE COMMISSIONER,
ANGEL ISLAND STATION, VIA FERRY POST OFFICE.
San Francisco, Cal., Jan. 26, 1914.

COMMISSIONER OF IMMIGRATION,
(Through Chinese Inspector in Charge.)
Port of San Francisco.

(In re Chin Fong, Merchant, Vis., New York, No. 13137/1-2 S. S. "Persia," Dec. 23, 1913:)

This applicant applied for Form 431 at the office at New York under No. 2495/44, Seattle No. 28913, and his application was denied on the ground that entry into the United States was gained through

fraud. The bureau in its letter of Feb. 21, 1912, No. 53422/27, affirmed the excluding decision.

The identical point which was passed upon at that time squarely arises in the present instance.

I can see no reason why a different ruling should be made at this writing and recommend that adverse action be again taken.

Attorneys Ralston & Richardson, under date of Jan. 19, 1914, filed an appearance and appeal if necessary.

(Signed) J. H. McCALL,
Chinese Inspector.

JHM

88 (Copy.)

ANGEL ISLAND, CALIF., *Jan. 24, 1914.*

#13137/1–2. Chin Fong, merchant Vis., New York, "Persia," Dec. 23, 1913.

Inspector, J. H. McCall; interpreter, R. F. Lym; stenographer, W. A. Foster.

REEXAMINATION OF APPLICANT. SWORN.

(This witness speaks the See Yip dialect, which is the interpreter's original dialect. This applicant was instructed to notify the inspector if he did not understand the interpreter at any time.)

Q. What are your names?

A. Chin Fong, Chin Ai Chee.

Q. Have you any other names?

A. No.

Q. Are you the person who testified in this office on Dec. 29, 1913?

A. Yes.

Q. Is this a tracing of your signature [showing Chinese signature at end of applicant's testimony]?

A. Yes.

Q. Do you wish to make any alterations or corrections in that statement?

A. No.

Q. You are absolutely positive that you do not care to make any alterations?

A. Yes; I am sure.

Q. (Showing photo on departure affidavit. NOTE.—This person departed with this single affidavit and without a duplicate. See report of record room under date of Jan. 21st.) Who is that?

A. Myself.

Q. How many trips have you made to China?

A. Only this trip.

Q. Have you ever at any time ever appeared before the immigration officers and testified?

A. Yes; I have testified in the New York office.

Q. When?
A. C. R. 1-10.
Q. In what case?
A. In my own case.
Q. What case was that? What was your own case at that time?
A. Applied for Form 431.
Q. Did you get it?
A. No; I received a letter stating I was acknowledged as a merchant by the office, but to defer my trip until a further date.
Q. Are you sure you are telling us the truth?
A. Yes.
Q. Do you wish to make any possible excuse or equivocation at all?
A. I do not.
Q. (Showing photo on Form 431, Dec., 1911, New York, No. 2495/444, Seattle No. 28913.) Whose photograph is that?
A. That is myself.
Q. The record shows that under date of Feb. 26, 1912, file No. 28913 that the certificate you sought could not be granted. Why do you testify as you do?
A. I was told by the Chinese who represented me in my case that the office had acknowledged my mercantile status, and that I could make the trip, and so I made it.
Q. But your understanding seems to be an impossibility for the reason that the letter above mentioned is addressed to Chin Fong care Kwong Mow Lan Co., 8 Pell Street, New York City. That shows the letter written to you by the commissioner at Seattle was addressed to you personally, and that in accordance with the postal laws and regulations that communication could only have been delivered to yourself.
A. I never received such a communication while I was in New York.
Q. Do you expect this office, if you are a resident of New York City as you claimed in your testimony of Dec. 29th in this office, do you expect us to accept such a statement as that; that you did not receive a communication addressed to you in a Government envelope.
A. The interpreter I had employed representing me might have kept the communication himself and not have let me have it. I do not know how to read or write myself in English.
89 Q. You were represented by an attorney, Mr. Storey?
A. Yes. He told the interpreter that was representing me that the decision in Washington said that I could go to China, and that I was acknowledged a merchant.
Q. Your statements are inconsistent and not in accord with the record. We will therefore rely on the record rather than your statements. You also testified that you were examined in Niagara Falls about the 4th month of K. S. 32. Is that correct?
A. Yes.

Q. Do you wish to make any alterations or corrections in any particular?

A. No.

Q. On Jan. 3, 1912, in New York, you testified that you first entered the United States K. S. 22–11 at the two statements in the two applications?

A. I said K. S. 22. I did not say K. S. 32 in my last testimony.

Q. Just a moment ago you said that the statement of K. S. 32 was correct. You verified your original testimony before being confronted with the New York record.

A. I thought you meant K. S. 22 instead of K. S. 32 when you asked me whether it was correct or not.

Q. Why is it you give a different month in the two different records?

A. I really came in K. S. 22, arriving in the United States across the border in the 5th month. I left China in the 4th month.

Q. How did you cross the border?

A. All the aliens were stopping at Montreal, and there were two white men who called our names and we went to Niagara Falls with them.

Q. Didn't you cross the border surreptitiously and not through the regular Government channels?

A. I was examined in a big building in Niagara Falls, and after my examination I was taken to the train by the same man who examined me and put me on the train to New York.

Q. You claim to have had a section 6 paper, and to have lost it. Is that correct?

A. I do not know exactly what kind of a paper I had. I was young then—I do not know what kind of a paper, but I had a paper.

Q. Describe it?

A. Two page paper with my photograph attached to it and a lot of writing on it. There was also a gold seal on it. I got it at Canton City.

Q. Where is that paper now?

A. At the time our store moved we lost it.

Q. What store?

A. Yung Wah Tong.

Q. When did you last see it—what date?

A. K. S. 34–7 or 8.

Q. Why is it that you do not give the same testimony to-day as you did on Dec. 29th as to the date? Can't you give the same testimony within a month?

A. (No answer.)

Q. As a matter of fact, according to the report at New York City, no such move ever took place. How do you account for that?

A. It was formerly on Mott Street, and then moved to Pell Street. There was such a move.

Q. What number Pell Street?
A. The store is not in existence now.
Q. What was the number at that time?
A. 33.
Q. You are also advised that the firm who now occupies 33 Pell Street has been there for many years last past, which also shows that your statement is incorrect. Why do you make such statements?
A. The store was sold to this Sam Yup man, named Ah Fong. The name of the firm was Fong Kee.
Q. Is Fong Kee at 33 Pell Street now?
A. Yes.
Q. You are advised that this is not a correct statement according to the investigation at New York. Why not tell the truth?
A. There is a Fong Kee.

90 Q. Do you expect us to believe you in preference to the investigation conducted at New York City by members of the Immigration Service?
A. I did not have to come in illegally at that time. Yung Wah Tong got my papers for me in China and the rules of the exclusion act at that time were not so severe as it is now and it was easy for me to get in at that time. I did not have to come —— this country at that time illegally.
Q. Have you anything further to state?
A. No.
Q. (Through Interpreter Ed. L. Park) Have you understood the interpreter?
A. Yes.
(Signed in Chinese characters.)
JHM/WAF 1/26/14
1936/20

(Chinese signature)

91 (Copy.)

DEPARTMENT OF COMMERCE AND LABOR, IMMIGRATION SERVICE.

No. 28,914. OFFICE OF THE COMMISSIONER,
Seattle, Wash., January 19, 1914.

COMMISSIONER OF IMMIGRATION.
San Francisco, Cal.:

At the instance of the Chinese inspector in charge, New York City, there is transmitted herewith our file covering the status of one Chin Fong, who was denied a return certificate as a domiciled merchant, under date of Febuary 26, 1912. Please return this record when it has served its purpose.

The New York office states that this Chinese is now an applicant at your port for admission, and that your file in his case is No. 13137/1–2.

(Signed) HENRY M. WHITE,
Commissioner.

Inc. 15827
HAM/WC
(Stamped) Received, P. M. 1914, Jan. 22.
ChD
McCALL.

2 (Copy.)
Form 2545.

DEPARTMENT OF LABOR, IMMIGRATION SERVICE,
OFFICE OF THE COMMISSIONER,
San Francisco, Cal., 1/21/14.

Memorandum for the Commissioner (Chinese Division).

(In re Chin Fong, 13137/1–2. Native departing. No. 12017. Persia 12/23/13.)

No duplicate on file, Nov. 23, 1912, "Nile," wharf book shows Chin Fong, age 33, merchant, born in China, firm Kwong Mon Lan Co., 8 Pell St., N. Y. Notation "One paper." (Signed) C. H. Ball, Searcher.

(Signed) LORENZEN,
Inspector in Charge, Records and Maintenance Section.

33 (Copy.)

COPY.

DEPARTMENT OF LABOR, *Jan. 20, 1914.*

Respectfully forwarded to Insp. McCall.

C. M.

Await record from Seattle. 1-30-14.

94 [Western Union telegram.]

(Copy.)

Duplicate of telephoned telegram.
Received at S. E. corner Pine and Montgomery Sts., San Francisco.
1685. 1914, Jan. 19, p. m. 4.31.
D317 EA 15.

WASHINGTON, D. C., 19—.

COMMISSIONER OF IMMIGRATION,
San Francisco:

Please enter our appearance case Chin Fong and in event denial note appeal for us.

RALSTON AND RICHARDSON.

ChD. McCall.
Telephone No. ———.
Telephone to Kenney.
Time 4.34.
By F. B. To be Mld.

95 [Western Union day letter.]

(Copy.)

WASHINGTON, D. C.

COMMISSIONER OF IMMIGRATION,
Angel Island, Cal.:

Please enter our appearance case Chin Fong and in event denial note appeal for us.

RALSTON & RICHARDSON.

Rec'd 4.35 p. m. By Kenney.
(Stamped) Received 1.30 p. m. 1914. Jan. 20.

96 (Copy.)

U. S. DEPARTMENT OF LABOR, IMMIGRATION SERVICE.

In answering refer to
File No. 2495/444.

OFFICE OF CHINESE INSPECTOR IN CHARGE,
DISTRICT OF NEW YORK AND NEW JERSEY,
17 State Street, New York, N. Y., January 15, 1914.

COMMISSIONER OF IMMIGRATION,
San Francisco, Cal.

Referring to your letter of the 2d instant, No. 13137/1–2, I return herewith papers in the case of Chin Fong ex S. S. "Persia," December 23, 1913, applying for admission at your port as a merchant and member of the firm of Kwong Mow Lan & Co., No. 8 Pell St., New York City.

In connection with this case, would state that our records show that his applicant filed an application for a return certificate as a merchant and member of the above firm in this office on December 9, 911, and that the said application was given unfavorable considera- ion by the commissioner of immigration at Seattle, Washington, nder date of January 18, 1912, and I have requested the Seattle office o forward to you the original record. In view of the fact, how- ver, that while this application was denied in January, 1912, he did ot depart from the United States until November 23, 1912, a further nvestigation has been made covering this period, and attached to he record will be found in triplicate the sworn statement of Chin Young, the manager of the firm, together with those of the statutory witnesses, Messrs. Israel Brand and John L. Delmonte, both of whom are business men, and so far as this office knows, reputable.

From the examination of the applicant conducted at your port it is noted that he claims to have been first admitted to the United States in K. S. 32 (1906) at Niagara Falls as a section 6 Canton merchant, and further, that his certificate was lost at the time the firm of Yung Wah Tong, was moving in the fifth or sixth month of S. T. 1 (1909) from No. 32 Mott St. to 33 Pell St. Niagara Falls was not a port of entry for Chinese in K. S. 32 (1906), and conse- quently he could not have been admitted through that port. Further, the firm of Quong Yuen Shing & Co. has occupied the premises at No. 32 Mott St. for many years last past, as is also the case with the firm of Chong Lung & Co. at No. 33 Pell St.

By reference to the statement of this applicant made before this office on January 3, 1912, which will form a part of the record to be forwarded to you by the Seattle office, it will be noted that Chin Fung testified he was first admitted to the United States in K. S. 22, 11th month (Dec. 1896–January, 1897) at Niagara Falls, upon a merchant paper which had been forwarded to him by the firm of Young Wah Hong & Co., No. 33 Mott St., and that he continued in business with said firm for a period of about six years, which would be until 1902 or 1903, when the firm went out of existence.

Kwong Mow Lan & Co. are engaged in manufacturing cigars at No. 8 Pell St., where they also dispose of them at retail as well as wholesale, and it is believe to be a bona-fide establishment.

H. R. Sisson,
Inspector in Charge.

Enc. S/m.

(Copy.)

Office Chinese Inspector,
N. Y. City, January 14, 1914.

In the matter of Chin Fong, No. 13137/1–2, ex S. S. "Persia," December 23, 1913, applying for admission at San Francisco, as a merchant and member of the firm of Kwong Mow Lan & Company, 8 Pell Street, New York City.

F. S. Pierce, inspector; Louis Fong, interpreter; F. E. Boerner, stenographer.

Q. What is your name?

A. Chin Young. [Sworn.]

Q. You are manager of the firm of Kwong Mow Lan & Company, 8 Pell Street, this city?

A. Yes.

Q. The business of the firm is that of manufacturing cigars?

A. Yes.

Q. How long have you been manager of that firm?

A. Between nine and ten years.

Q. I show you this photograph, and ask if you recognize it? [Referring to photograph in cases 2495/444.]

A. Chin Fong.

Q. Where is Chin Fong at the present time?

A. At San Francisco.

Q. Has he been to China recently?

A. Yes; he is returning now.

Q. He is applying for admission to the United States at San Francisco?

A. Yes.

Q. Can you tell when Chin Fong departed for China?

A. Year before last; tenth month.

Inspector's note: From the records submitted by the San Francisco office it shows that Chin Fong departed from San Francisco, November 23, 1912.

Q. Did Chin Fong leave New York City on his way to China in the tenth month of 1912?

A. Yes.

Q. Do you recall appearing in this office on January 4, 1912, and being examined by the inspector in charge as manager of the firm of Kwong Mow Lan Company, at the time Chin Fong requested a preinvestigation of his status as a merchant?

A. Yes; but I don't remember what I said.

Q. At the time you were examined was Chin Fong a member of the firm of which you were manager?

A. Yes.

Q. How much money had he invested in the firm at that time?

A. $500.

Q. Has Chin Fong retained his membership in the firm of Kwong Mow Lan Company?

99 A. Yes.

Q. Does he still rétain $500 interest in the firm?

A. Yes.

Q. During the time intervening between your examination in this office January 4, 1912, and Chin Fong's departure for China in November of that year, what was Chin Fong doing?

A. Working in the store.

Q. Was he engaged in the store as a member of the firm continuously during those months?

A. Yes.

Q. During that time he didn't perform manual labor of any kind outside the store?

A. No.

Q. If he is readmitted to the United States do you know what his plans are?

A. He will work at the store again.

Q. Who has taken Chin Fong's place while he has been absent in China?

A. Chin Dor.

Q. If Chin Fong returns to the firm will he take the place of some one of the men who are now active partners in the firm?

A. We have a vacancy for him.

Q. How many active partners are there in the store at the present time, and what are their names?

A. There are two active members of the firm and two who are employed there.

Q. What are the names of the active partners?

A. Chin Dor and myself.

Q. What are the names of those who are employed there?

A. Soo Hoo Jung and Leung Fook.

Q. Is Ching Nguey connected with the firm?

A. He went to China.

Q. When did he leave for China?

A. I think about three or four months ago.

Q. Do you know any white persons who can testify as to Chin Fong's mercantile status during the period intervening between his examination here in January, 1912, and the time he departed for China?

A. The same two who testified for him when he asked to have his case preinvestigated, Mr. Delmonte and Mr. Brand.

Q. What is Mr. Delmonte's business and where is he located?

A. 7 Burling Slip; he sells tobacco.

Q. How long have you known Mr. Delmonte?

A. Seven or eight years.

Q. How often during the twelve months prior to Chin Fong's departure to China did Mr. Delmonte come to the store at 8 Pell Street?

A. About once a week.

A. Was Chin Fong usually in the store when Mr. Delmonte called?

A. Yes.

Q. Who usually gives Mr. Delmonte orders for tobacco for the firm?

A. When I am in the store I give the orders, but when I am out Chin Fong gave the order.

Q. Who was accustomed to pay the bills for the tobacco bought?

100 A. Sometimes I did, but if I wasn't there Ching Fong paid.

Q. What is Mr. Brand's business and where is it located?

A. He sells cigar boxes. He used to be on Mulberry Street, but he has moved on Centre Street somewhere.

Q. How long have you known Mr. Brand?

A. About seven or eight years.

Q. Between January, 1912, and November, 1912, how often did Mr. Brand come to the store at 8 Pell Street?

A. About once a week. He took the order the first of the week and delivered the boxes the last part of the week.

Q. Did Chin Fong before he departed for China ever give orders to Mr. Brand for cigar boxes?

A. Yes.

Q. Did he ever pay any of the bills for the cigar boxes?

A. Yes.

Q. What is the total capitalization of Kwong Mow Lan Company?

A. It used to be a little over $7,000, but some members have sold their interest back to the firm, it a little over $6,000.

Q. How much an interest in the firm have you?

A. $1,000.

Q. How many partners are there?

A. Chin Nguey, Chin Fong, Chin Dor, Chin Look, Moy Fook and myself.

Q. Are those all the members of the firm?

A. Yes.

Q. Has the partnership list changed since you submitted one on the 4th of January, 1912?

A. Yes.

Q. Do you remember how many members were in the firm on the date mentioned, January 4, 1912?

A. Eight.

Q. I show you this signature and ask if it is yours [referring to partnership list of the firm in file 2495/444]?

A. Yes.

Q. Do you remember making out this partnership list in January 1912?

A. Yes.

Q. At that time you mentioned ten persons as being connected with the firm?

A. Maybe so, but I don't remember.

Q. This was copied from the partnership book and it must be right?

A. Yes.

Q. You say now there are only six partners in the firm?

A. Yes.

Q. Can you name the four who have withdrawn from the firm since you submitted this list in January, 1912?

A. Chin On, Chin Tai hin Guey, and Chin Jin.

Q. You state under oath, do you, that Chin Fong is still a member of the firm of Kwong Mow Lan Company with an interest therein of $500?

A. Yes.

Q. And that if he is readmitted to the United States he will resume active participation in the business?

A. Yes.

101 Q. Do you know when Chin Fong first came to the United States?

A. No.

Q. How long have you known Chin Fong?

A. Over ten years.

Q. Have you understood all the questions that have been asked you?

A. Yes.

Witness signed stenographic notes. (Chinese signature.)

(Signed) F. S. PIERCE,
Chinese & Immigrant Inspector.

102 (Copy.)

7 BURLING SLIP,
New York City, January 13, 1914.

In the matter of Chin Fong, 13137/1–2, ex S. S. "Persia," December 23, 1913, applying for admission at San Francisco, as a merchant and member of the firm of Kwong Mow Lan & Company, 8 Pell Street, New York City.

F. S. Pierce, inspector; F. E. Boerner, stenographer.

Q. What is your name?

A. John L. Delmonte. [Sworn.]

Q. You are a dealer in leaf tobacco at 7 Burling Slip?

A. In partnership with my father.

Q. I show you this photograph and ask if you recognize it [referring to photograph of Chin Fong]?

Q. Chin Fong, in the Mow Lan cigar factory, 8 Pell Street.

Q. That is where you have known this man whose photograph I have showed you?

A. Yes.

Q. How long have you known this man?

A. Three or four years, maybe more.

Q. Do you know where this man is now?

A. He left here to go to China. I made an affidavit about six or seven months ago for him.

Q. Do you know when he left the United States for China?

A. About six or seven months ago, but he didn't leave right away.

Q. As a matter of fact this man left for China in November, 1912. During the twelve months prior to November, 1912, how often did you visit the store at 8 Pell Street?

A. Twice a week as I do now.

Q. Did you usually see Chin Fong there during those twelve months?

A. Yes.

Q. Did you ever have any business dealings with Chin Fong in which he represented the firm?

A. He has paid me.

Q. Has he ever given you orders?

A. He told me to bring up better samples if he didn't like what I showed him.

Q. Do you know any other members of the firm there?

A. Chin Yung, and one Chin Hee.

Q. Did Chin Fong ever come down here to the store?

A. Yes; with Chin Yung, those two are considered the heads.

Q. Who usually selected the tobacco?

A. Between Chin Yung and this man.

103 Q. Do you know how many times Chin Fong has paid you bills?

A. I can't tell you that.

Q. About what would their bills amount to?

A. A bale of tobacco a month, $140 to $170, about $200 a month.

Q. During the year prior to November, 1912, do you believe Chin Fong performed manual labor of any kind outside the store at 8 Pell Street, such as working in a laundry or restaurant?

A. Not to my knowledge.

Q. Are you satisfied in your own mind that he is a bona fide merchant and member of the firm of Kwong Mow Lan Co.?

A. Yes.

(Signed.) F. L. PIERCE,
Chinese & Immigrant Inspector.

104 (Copy.)

207 CENTRE STREET,
New York City, January 13, 1914.

In the matter of Chin Fong, 13137/1–2, ex S. S. "Persia," December 23, 1913, applying for admission at San Francisco as a merchant and member of the firm of Kwong Mow Lan & Company, 8 Pell Street, New York City.

F. S. Pierce, inspector; F. E. Boerner, stenographer.

Q. What is your name?

A. Israel P. Brand. [Sworn.]

Q. What is your occupation?

A. I work for my father, R. Brand, 207 Centre Street, manufacturer of cigar boxes.

Q. Do you recognize that photograph [referring to photograph of Chin Fong].

A. Chin Fong.

Q. How long have you known Chin Fong, and where have you known him?

A. About five years, at 8 Pell Street, in the firm there, Kwong low Lan Company.

Q. What is the nature of that firm's business?

A. Cigar manufacturers.

Q. Do you furnish them with cigar boxes?

A. Yes.

Q. Do you know where this Chin Fong is at the present time?

A. I do not.

Q. When was the last time you saw him?

A. A year and a half ago.

Q. Have you any means of knowing that Chin Fong is a member of he Kwong Mow Lan Company?

A. All the orders were C. O. D., and he paid me.

Q. Did he ever give you orders for boxes?

Q. Yes.

Q. As a matter of fact this man departed for China in November, 1912. Can you recall about how frequently you visited the store for the twelve months prior to that time?

A. Every week.

Q. During your visits to the store did you usually see Chin Fong there?

A. Usually he was there.

Q. Do you know any other members of the firm there?

A. C. G. Young is the man I do business with now.

Q. Can you recall how many times Chin Fong paid you money for cigar boxes during the year prior to November, 1912?

A. No.

105 Q. You are positive, are you, that he gave you orders for boxes?

A. Yes.

Q. Chin Fong, in his examination at San Francisco in answer to the question, "Did you buy cigar boxes from him, Mr. Brand, personally?" said "I paid him for it. I never bought any. He brought the things to the store, and I paid the bill for it." In answer to the question, "Who bought the goods?" Chin Fong replied, "Chin Yung."

A. He ordered boxes from me and paid me.

Q. But you can't say how often?

A. No.

Q. Who did most of the ordering, he or this man you call C. G. Young?

A. Sometimes both of them would be there and talk together.

Q. Who of these two Chinamen paid you most frequently for goods delivered?

A. About the same way.

Q. About how large were your bills?

A. About $12.

Q. Do you believe that during the twelve months prior to November, 1912, Chin Fong performed manual labor outside of the store at 8 Pell Street, such as working in a laundry or restaurant?

A. Not that I know.

Q. Are you satisfied in your own mind Chin Fong is a bona fide merchant and member of the firm of Kwong Mow Lan Company?

A. As far as I know.

(Signed) F. S. PIERCE,
Chinese & Immigrant Inspector.

106 (Copy.)

Partnership list of the firm of Kwong Mow Lan & Co., No. 8 Pell St., New York, N. Y., filed by Chin Young, manager, on Jan. 4, 1912. Date of organization ———; capitalization $———; total membership ———; active members ———.

Name.		Date joined firm.	Amount invested.	Date became active member.	Address.
Chinese.	English.				
Chinese name)....	Chin Jin.....	K. S. 29—9 mo. 1 day....	$500	.....	10 Pell St.
(" ")	Chin Young.....	K. S. 29—9 mo.....	1,000	.....	Store.
(" ")	Chin Ng Quong.....	....do.....	500	.....	Do.
(" ")	Chin Tai.....	....do.....	500	.....	N. Y. City.
(" ")	Chin Quong.....	....do.....	500	.....	Do.
(" ")	Chin Look.....	....do.....	1,000	.....	China.
(" ")	Chin On.....	....do.....	500	.....	N. Y. City.
(" ")	Chin Fong.....	K. S. 33—8 mo.....	500	.....	Store.
(" ")	Moy Fook.....	....do.....	500	.....	N. Y. City.
(" ")	Chin Dor.....	....do.....	500	.....	Do.

(Chinese signature) (Chin Young.)

Chin Dor to become active upon departure of Chin Fong.

H. R. S.

107 U. S. DEPARTMENT OF LABOR, IMMIGRATION SERVICE.

OFFICE OF THE COMMISSIONER,
ANGEL ISLAND STATION, VIA FERRY POST OFFICE,
San Francisco, Cal., Jan. 2, 1914.

In answering refer to
No. 13137/1–2.

(Copy.)

CHINESE INSPECTOR IN CHARGE,
Immigration Service, 17 State Street, New York City.

Inclosed please find record in the case of Chin Fong, alleged merchant of New York, who arrived at this port on the S. S. "Persia," December 23, 1913.

Please cause an investigation to be conducted in accordance with the report of Inspector J. H. McCall, and furnish this office with

transcript of testimony and report of the examining inspector in triplicate.

(Exact copy as signed by H. Edsell. Mailed Jan. 2, 1914. By (Signed) A. H.)

CT *Acting Commissioner.*

Inc. 48147.

108 U. S. DEPARTMENT OF LABOR, IMMIGRATION SERVICE.

OFFICE OF THE COMMISSIONER,
ANGEL ISLAND STATION, VIA FERRY POST OFFICE,
San Francisco, Cal., Dec. 29, 1913.

(Copy.)

COMMISSIONER OF IMMIGRATION,
Through Chinese Inspector in Charge,
Port of San Francisco.

(In re Chin Fong, merchant, vised, New York, No. 13137/1–2, ex S. S. "Persia", Dec. 23, 1913.)

The statement of the applicant has been taken. It will be noted that he claims to be a member of a firm in New York City. The papers should be forwarded to that place for investigation, as well as a report on the original entry of this person into the United States.

(Signed) J. H. MCCALL,
Chinese Inspector.

109 (Copy.)

ANGEL ISLAND, CALIF., *Dec. 29, 1913.*

#13137/1–2, Chin Fong, merchant, vis., New York, "Persia," Dec. 23, 1913.

Inspector, J. H. McCall; interpreter, Louis Fon; stenographer, W. A. Foster.

Applicant sworn.

(This witness speaks the See Yip dialect. Interpreter Louis Fon speaks the same dialect originally.

The applicant was instructed to notify the inspector if at any time he did not thoroughly understand the interpreter.)

Q. What are your names?

A. Chin Fong, Chin Ai Chee, no others.

Q. How old are you?

A. Thirty-four.

Q. Where were you born?

A. Mong Mee village, S. N. D.

Q. When did you first come to the United States?

A. K. S. 32, sailed from China in the second month, via S. S. "Empress of India." I do not know the date of his arrival at Vancouver. I went to New York by way of Montreal as a section 6 Canton merchant, under the name of Chin Fong.

Q. Where did you enter the United States?

A. I was examined at Niagara Falls by immigration officers.

Q. What was that date?

A. About the 4th month of that year—I don't remember the date.

Q. Where is your section 6 certificate?

A. I kept that paper in the Yung Wah Tong Co., in which firm I have an interest. They were moving in the 5th or 6th month of S. T. 1 and it was lost during the time when they were moving.

Q. From what to what address were they moving?

A. From 32 Mott Street to 33 Pell Street.

Q. Are you married?

A. Yes.

Q. When were you married?

A. Married C. R. 1–12–12.

Q. What is the name, age, and feet of your wife?

A. Leung Shee, natural feet, twenty-one, now living in the Hung Mee village in China.

Q. How many children have you?

A. No children.

Q. Is your wife an expectant mother?

A. No.

Q. Immediately after your arrival in the United States K. S. 32-4 what did you do?

A. I joined the Yung Wah Tong Chinese drugstore, 32 Mott Street, about the 5th month of that year in the position of salesman and prescription clerk.

Q. What interest did you purchase at that time?

A. $500.

Q. How long did you remain in that firm?

A. A little over three years.

Q. Until when?

A. Until K. S. 36–8.

Q. Was there such a thing as Kwong Suey 36?

A. I don't remember how many years there were in the Kwong Suey reign. I stayed in the firm of Yung Wah Tong about six years.

Q. At what addresses was that store?

A. Three years on the Mott Street number; then they moved to 33 Pell Street for a little over three years and the firm went out of business.

Q. Who was the manager of that firm?

A. Chin Hay Wah.

Q. After the firm went out of business what did you do?

A. Then I was employed at Quong Hai Chung Co., 32 Pell Street as a salesman and prescription clerk for about three years.

Q. Do we understand you to say that you arrived in the United States K. S. 32–5 and were a member of the Yung Wah Tong for six years and employed in the Quong Hai Chung for three years before you departed for China?

A. No; I was a member of that cigar factory for another three years.

Q. What cigar factory?

A. Quong Mow Long Co., No. 8 Pell Street.

Q. When did you join that firm?

A. K. S. 35.

Q. Did you enter that firm in K. S. 35?

A. Yes.

Q. As an active member?

A. No; I merely purchased an interest.

Q. When did you become an active member in that firm?

A. I was an active member of that firm during the three years prior to my departure for China.

Q. From what date?

A. S. T. 2 (1910).

Q. How many years of Kwong Suey were there before the reign of Sin Tung?

A. I don't know.

Q. How many years after K. S. 36 was S. T. 2?

A. I don't remember.

Q. Do we understand you to say that you were six years with the Yung Wah Tong, three years with the Quong Hai Chung and an active member of the Quong Mow Long Co. for three years prior to your departure for China? Is that correct?

A. Yes.

Q. That is an impossibility. Seven years only have passed and you have accounted for 12.

A. I might have made a mistake about the time I worked for the Quong Hai Chung. I do not know how many years I really worked there.

Q. Should you not remember how long you worked in Quong Hai Chung?

A. I don't remember.

Q. Why don't you remember if you worked there every day?

A. One or two years.

Q. Have you any other explanation to offer?

A. No.

Q. When did you become an active member in Quong Mow Long Co.?

A. S. T. 2–8.

Q. Who was the manager of the firm at that time?

A. Chin Yung.

Q. What is his other name?

A. He had no other name.

Q. What is the capital stock of the firm?
A. $6,000.
Q. How many members?
A. Ten.
Q. How many active members?
A. Three.
Q. Name them with their positions and interests.
A. Chin Yung, manager, $1,000; Chin Ng Guey, he looks after the tobacco, etc., $500; myself, outside salesman, $500.
Q. What do you mean by outside salesman?
A. I take the cigars out and sell them.
Q. To whom?
A. To different Chinese stores and Chinese restaurants and American stores and wherever orders come in for it, I deliver the orders.
Q. About how many days per month prior to your departure were you outside of the store engaged in business?
A. Most of the time I was in the store. Whenever orders came in I delivered the goods.
Q. How many days per month were you outside?
A. I made about twenty deliveries during the month.
Q. Were you out almost every business day making a delivery?
A. Yes.
Q. What wages did you receive?
A. $35 a month.
Q. Have any dividends been declared since you entered the firm either as a silent or active member?
A. Yes; a little.
Q. When?
A. In S. T. 1 I received $112.
111 Q. At any other time did you receive money as dividends?
A. Yes; in S. T. 2 I also received $112.
Q. Any other time?
A. $50 in S. T. 3. In the Chinese Republic I have received no dividends.
Q. What articles did you carry in this firm?
A. Nothing but cigars.
Q. What brands?
A. We have no particular brand, but we have one brand called the "Boquet" and stogies and a shorter cigar than the stogies—five cent cigar.
Q. Don't you know the name of the brand under which you sell them?
A. No name.
Q. How would you do when you went to an American to sell him cigars?
A. I go to Chinese mostly—very little to Americans.
Q. When you did go to Americans how did you proceed to sell them goods if you can not name the brands you carried?

A. I never sold any to the American stores.
Q. And why have you said that you did?
A. I did not say so.
Q. Do you think our interpreter would falsify your replies?
A. I meant Chinese stores, not American stores.
Q. Did you ever manufacture a cigar?
A. I never made any cigars by hand, but I did handle the machine to put the cigar in the mold; also, I selected tobacco leaves.
Q. In putting the cigars into the mold don't you perform a certain part of the manufacture of the article?
A. That is only once in a while when it is necessary during the last part of the year when it is busy time.
Q. Why do you mean by that?
A. That is before the Chinese holidays we generally get a lot of orders from the Chinese who want cheap cigars and so I help in one or two days a month.
Q. How many employees are in this cigar factory?
A. We employ three outsiders besides the three that I have mentioned as members of the firm.
Q. What wages did you pay them?
A. We pay them by the hundred.
Q. How much do you pay them?
A. $1 and $1.25 per hundred.
Q. Describe the building at No. 8 Pell Street.
A. Three-story brick building, upstairs used for rooming. There is an alley goes in on the side. The entrance of the store is facing the alley instead of one of the main streets.
Q. Where is the store?
A. On the ground floor. There was a basement downstairs. The basement was used as a storeroom for the Man Fong restaurant, right opposite our store.
Q. What was to the right of Quong Mow Long Co.?
A. There was an American saloon.
Q. What is on the other side?
A. Quong Yick Yuen, Chinese dry goods and general merchandise.
Q. What is across the street?
A. Man Fong Chop Suey restaurant is upstairs; downstairs is an American saloon.
Q. Name the streets in Chinatown of New York.
A. Pell, Mott, Dwyer, and Boyer, which had only a few Chinese stores. That's all.
Q. What is the name of the largest Chinese store?
A. Quong Yuen Sing Co. is the largest Chinese merchandise company on Mott Street; I don't know the number.
Q. Who was the supervising Chinese of Chinatown New York?
A. Lee Hee Ling and another man by the name of Chin Kue are the most prominent Chinamen.

Q. Is there a representative of the Chinese Government located at New York?

A. Yes; there is a Chinese consul there, but I do not know his name.

Q. Where is the consul's residence?

A. Near the water front; I do not know what street.

Q. Who will be the white witnesses?

A. Mr. "Brandt," manufacturer of cigars and "John Delamond." That's all.

112 (Copy.)

Q. How long have you known Mr. Brandt?

A. Both of these men knew me three years since I was an active member of this cigar factory.

Q. What is the business of Mr. Brandt?

A. He deals in cigar boxes.

Q. Where is his office?

A. 204 Center Street.

Q. During the twelve months prior to your departure how often did you visit his place of business?

A. I did not go to his place of business but he comes to our store once a week.

Q. Did you buy cigar boxes from him personally?

A. I paid him for it. I never bought any. He brought the things to the store and I paid the bill for it.

Q. Who bought the goods?

A. Chin Yung.

Q. During the twelve months previous to your departure how much money did you pay him for goods purchased?

A. I paid him three times during Chin Yung's absence in the hospital.

Q. How much?

A. Between $10 and $20 each time.

Q. How long was Chin Yung in the hospital?

A. A little over a month.

Q. What month?

A. C. R. 1–10. Nov., 1912.

Q. What was the address of the business of Mr. John Delamond?

A. He deals in tobacco leaf, # 7 "Belling" Street.

Q. How often for the twelve months prior to your departure did you call at his place of business?

A. I went there once.

Q. When was that?

A. Two or three days prior to my departure for China I went there to bid him good-bye.

Q. For the twelve months prior to that time how often did he call at the store of Quong Mow Lung?

A. About once a week.

Q. Who selected the tobacco?

A. Chin Yung.
Q. Did you ever do so?
A. No.
Q. Did you ever pay him any money?
A. Only once.
Q. How much?
A. $60.
Q. If it is not possible to find these two men in New York City at the present time is there any other person that you know?
A. No.
Q. Have you anything further to state?
A. No.
Q. Have you understood the interpreter? (Through Interpreter Ed Park.)
A. Yes.
(Signed in Chinese characters.)

(Chinese signature.)

JHM/WAF 1/2/14.
1886/34.

113 (Copy.)

Wharf book shows Chin Fong, age 33, Kwong Mow Lan Co., 8 Pell St., N. Y.
No duplicates (one paper).

114 (Copy.)

Department of Commerce and Labor.
Bureau of Immigration.

(Photo.)

In the matter of application of Chin Fong, returning merchant for admission into the United States.
(Endorsed:) Departed from San Francisco per steamer "Nile," Nov. 23, 1912. (Signed) W. D. Heitmann, inspector. (Signed) W. D. Heitmann, inspector. 11/23/12.

STATE OF NEW YORK,
City and County of New York, ss:

Chin Fong, being duly sworn, deposes and says: that he is a Chinese merchant, a bona fide member of the firm of Kwong Mow Lan Co., manufacturers of cigars doing business at No. 8 Pell Street, in the Borough of Manhattan, City of New York, having therein an

interest of Five hundred ($500.00) dollars; that he has been a member of said firm for a period of more than five years last past, during which time he has performed no manual labor other than which was necessary for the transaction of business in connection with said firm; that he now desires to make a visit to China for both pleasure and business, with intention to return to the United States after completing the visit aforesaid.

For the purpose of aiding his reentering the United States, deponent gives the description of himself as follows: Age, 33 years; height, 5 feet 3½ inches; physical marks: a scar over right eye, one on front of right ear, one on right corner and two on left corner of mouth, one under left jaw, and one on each side of face. And for his better identification, deponent attached hereto a true photograph of himself.

(Signature in Chinese.)
(CHIN FONG.)

Subscribed and sworn to before me this 10th day of September, 1912.

(Signed) WALTER EUGENE BIRD,
Notary Public, 87 N. Y. Co.

115 (Copy.)

STATE OF NEW YORK,
City and County of New York, ss:

The undersigned, being duly, individually, and severally sworn, depose and say; that they are persons other than Chinese; that they are personally acquainted with Chin Fong who executed the preceding affidavit; that they know said Chin Fong is a member of the firm of Kwong Mow Lan Co., engaging in manufacturing cigars at No. 8 Pell Street, in the Borough of Manhattan, City of New York, for five years last past, during which time, to the best of deponents' knowledge and belief, the said Chin Fong has not been engaged in the performance of any manual labor other than that which was necessary for the conduct of his business in said firm; that they recognize the photograph attached to his affidavit to be the true likeness of said Chin Fong.

(Signed) ISRAEL B. BRAND,
207 Center Street.
(Signed) JOHN DELMONTE,
#7 Burling Slip, New York City.

Subscribed and sworn to before me this 10th day of Sept., 1912.
[SEAL.] WALTER EUGENE BIRD,
Notary Public, 87 N. Y. Co.

116 (Copy.)

Miss G. M. CHAMBERLIN, Room 303, 261 Broadway, New York.

117 (Copy.)

Department of Commerce and Labor, Bureau of Immigration. Application of Chin Fong, merchant and member of the firm of Kwong Mow Lan Company, No. 8 Pell St., New York City, for returning to the United States.

118 Form 2530.

(Copy.)

No. 13137/1–2. Name, Chin Fong. Steamer, "Persia." Date, December 23, 1913.

Cases used in connection with above case.

No.	Name.	Steamer.	Date.	Relationship.
Seattle 28913..... New York 2495/444.....	Chin Fong.....	Form 431 (denied).....	.....	Self.

119 Due service and receipt of a copy of the within ——— is hereby admitted this ——— day of ———, 191—.

U. S. Attorney, Northern District of California,
Attorney for Respondent.

(Endorsed:) Docketed. No. 3180. United States Circuit Court of Appeals for the Ninth Circuit. Petitioner's Exhibit "A." Filed, July 12, 1918. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

(Endorsed:) No. 16205. In the United States District Court, Northern District of California, Southern Division, Division No. 1. In the matter of Chin Fong (13137/1–2, ex S. S. "Persia," Dec. 23, 1913.) On Habeas Corpus. Exhibit "A" filed with petition for habeas corpus. Filed May 25, 1917. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.

George A. McGowan, attorney for petitioner, Bank of Italy Building, Montgomery and Clay Streets, San Francisco, California. Telephone Kearny 3092.

120 United States Circuit Court of Appeals for the Ninth Circuit.

CHIN FONG, APPELLANT,
vs.
EDWARD WHITE, AS COMMISSIONER OF IMMIGRATION FOR the port of San Francisco, appellee. | No. 3180.

Return to writ of certiorari.

By direction of the honorable the judges of the United States Circuit Court of Appeals for the Ninth Circuit, I, Frank D. Monckton, as clerk of said court, in obedience to the annexed writ of certiorari issued out of the honorable the Supreme Court of the United States and addressed to the honorable the judges of the United States Circuit Court of Appeals for the Ninth Circuit, commanding them to send, without delay, to the said Supreme Court the record and proceedings in the above-entitled cause, to attach to the said writ and send to the said Supreme Court a certified copy of a stipulation, entered into by and between the attorneys of record, that the transcript of record now on file in said cause in the said Supreme Court shall stand as the return to the said writ of certiorari, the original of which stipulation was filed in my office on the 6th day of December, A. D. 1919, and petitioner's original Exhibit "A" filed July 12, 1918.

In testimony whereof, I have hereunto set my hand and affixed the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this 6th day of December, A. D. 1919.

[SEAL.]

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.
By PAUL P. O'BRIEN,
Deputy Clerk.

121 File No. 27261. Supreme Court U. S. October Term, 1919. Term No. 506. Edward White, Commissioner of Immigration, etc., petitioner, *vs.* Chin Fong. Writ of certiorari and return. Filed December 12, 1919.

○

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

EDWARD WHITE, COMMISSIONER OF IMMIGRATION, petitioner,
v.
CHIN FONG.

No. 506.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

MOTION OF PETITIONER TO ADVANCE.

Comes now the Solicitor General on behalf of the petitioner in the above-entitled cause and respectfully moves the advancement thereof for hearing during the present term.

The question involved herein is whether the Act of November 3, 1893 (28 Stat. 7), providing that where application is made by a Chinaman for entry into the United States on the ground that he was formerly engaged therein as a merchant, he shall establish by the testimony of two credible witnesses, other than Chinese, the fact that he had been so engaged for at least one year prior to his departure from this country, adds merely an additional evidential requirement for reentry to those already existing, or whether Congress intended that the Act should supersede and

repeal the prior legislation and policy requiring applicants for reentry to furnish evidence that their original entry was lawful. The Circuit Court of Appeals for the Ninth Circuit, in reversing the judgment of the District Court, held that inquiry into the lawfulness of the original entry of the Chinaman could not be made in proceedings for reentry; and that respondent had been denied admission for a reason other than that connected with his status as a merchant under the act of 1893, *supra*.

The decision of the Circuit Court of Appeals, coming as it does in a circuit containing the principal ports of entry for Chinese aliens, very seriously affects the immigration officials in the administration of the laws relating to ingress and egress of such aliens, changes the theretofore prevailing practice, and has created uncertainty as to what may finally be held to be the law. If the original entry as a merchant can not be investigated, it furnishes inducement to Chinese aliens, by surreptitious entry over the Mexican and Canadian borders, to acquire residence, and by engaging in business as merchants then make use of a status thus acquired. It is important, therefore, that an early hearing may be had in this case.

Notice of this motion has been served on opposing counsel.

ALEX. C. KING,
Solicitor General.

JANUARY, 1920.

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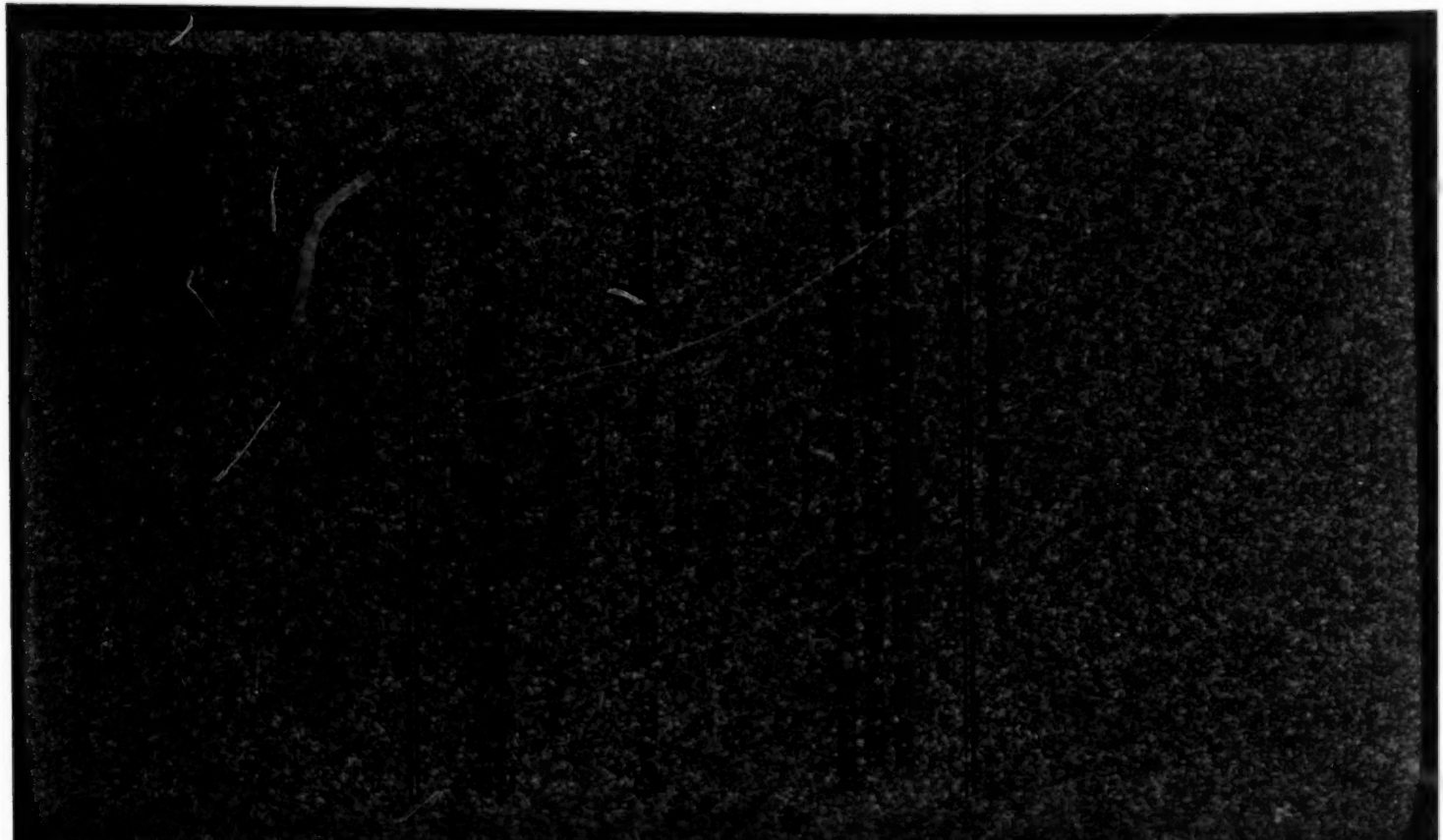

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

EDWARD WHITE, COMMISSIONER OF IMMIGRATION, petitioner,
v.
CHIN FONG.
No. ——.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, AND BRIEF IN SUPPORT

The Solicitor General, appearing on behalf of petitioner, prays the court to issue a writ of certiorari to bring up the above-entitled cause for review.

STATEMENT.

Respondent, a Chinese alien, applied for admission into the United States on the ground that he had been formerly engaged in this country as a merchant. He was denied admission on the ground that while he had been a merchant, nevertheless his original entry into the country had been unlawful. The Chinaman thereupon perfected an executive appeal to the Secretary of Labor, who affirmed the excluding decision. The Chinaman then filed a petition for a writ of habeas corpus, alleging violation of treaty rights.

The writ was denied, 213 Fed. 288, and he thereupon perfected an appeal to this court, which found that no real treaty question was involved and therefore ordered the appeal dismissed. 241 U. S. 1. The Chinaman then filed a new petition for a writ of habeas corpus, charging in substance that the immigration officers exceeded their statutory authority in excluding him. The petition was again denied, and the case taken on appeal to the United States Circuit Court of Appeals. That court reversed the judgment of the trial court and ordered the discharge of the Chinaman, holding that an inquiry into the lawfulness of the original entry of the Chinaman could not be had in the proceedings for reentry, but could only be had on deportation proceedings. The United States insists this position is erroneous.

QUESTION PRESENTED.

The question involved is whether a Chinaman, applying for admission into the United States on the ground that he had formerly been engaged in this country as a merchant, may be excluded on the sole ground that his original entry into the United States was illegal.

REASONS FOR GRANTING THE WRIT.

1. The decision of the Circuit Court of Appeals in this case is operative in the circuit embracing the chief Chinese ports of entry in this country. It is through these ports that domiciled Chinese merchants and others with like exemption come and go. The

ruling of the Court of Appeals ties the hands of the immigration officers in endeavoring to prevent the exercise of the treaty and statutory right of ingress and egress by Chinese aliens upon whom Congress never intended to confer such rights because of original unlawful entry.

2. The surreptitious entry of Chinese aliens into this country over the Canadian and Mexican borders has, at frequent periods, been effected by means which have baffled detection, and the present decision of the Circuit Court of Appeals appears to present to such aliens a further inducement to effect an illegal entry. Of course the appellate court never intended such a result, but it follows nevertheless.

For which reasons the issuance of said writ of certiorari is prayed.

A copy of such parts of the United States statutes as appear relevant to this case are attached. A brief in support of the petition is also herewith submitted.

ALEX. C. KING,
Solicitor General.
ROBERT P. STEWART,
Assistant Attorney General.

PERTINENT STATUTES.

Section 6 of the act of May 6, 1882, 22 Stat. 58, as amended by act of July 5, 1884, 23 Stat. 115, reads as follows:

> That in order to the faithful execution of the provisions of this act, every Chinese person, other than a laborer, who may be entitled by said treaty or this act to come within the United States, and who shall be about to come to the United States, shall obtain the permission of and be identified as so entitled by the Chinese Government, or of such other foreign government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such Government.
>
> * * * * *
>
> Such certificate viséed as aforesaid shall be prima facie evidence of the facts set forth therein, and shall be produced to the Chinese inspector in charge of the port in the district in the United States at which the person named therein shall arrive, *and afterward produced to the proper authorities of the United States whenever lawfully demanded*, and shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States; but said certificate may be controverted and the facts therein stated disproved by the United States authorities.

Section 9 of the same act reads as follows:

> That before any Chinese passengers are landed from any such vessel, the Chinese

inspector in charge, or his deputy, shall proceed to examine such passengers, comparing the certificates with the list and with the passengers; and no passenger shall be allowed to land in the United States from such vessel in violation of law.

Section 1 of the act of November 3, 1893, 28 Stat. 7, reads as follows:

That section 6 of an act entitled "An act to prohibit the coming of Chinese persons into the United States," approved May 5, 1892, is hereby amended so as to read as follows:

"SEC. 6. And it shall be the duty of all Chinese laborers within the limits of the United States *who were entitled to remain in the United States before the passage of the act to which this is an amendment* to apply to the collector of internal revenue of their respective districts within six months after the passage of this act for a certificate of residence; and any Chinese laborer within the limits of the United States who shall neglect, fail, or refuse to comply with the provisions of this act and the act to which this is an amendment, or who, after the expiration of said six months, shall be found within the jurisdiction of the United States without such certificate of residence, shall be deemed and adjudged to be unlawfully within the United States, and may be arrested by any United States customs official, collector of internal revenue or his deputies, United States marshal or his deputies, and taken before a United States judge, whose duty it shall be to order that he be deported from the United

States, as provided in this act and in the act to which this is an amendment, unless he shall establish clearly to the satisfaction of said judge that by reason of accident, sickness, or other unavoidable cause he has been unable to procure his certificate, and to the satisfaction of said United States judge, and by at least one credible witness other than Chinese, that he was a resident of the United States on the 5th of May, 1892; and if, upon the hearing, it shall appear that he is so entitled to a certificate, it shall be granted upon his paying the cost. Should it appear that said Chinaman had procured a certificate which has been lost or destroyed, he shall be detained and judgment suspended a reasonable time to enable him to procure a duplicate from the officer granting it, and in such cases the cost of said arrest and trial shall be in the discretion of the court; and *any Chinese person, other than a Chinese laborer, having a right to be and remain in the United States,* desiring such certificate as evidence of such right, may apply for and receive the same without charge; and that no proceedings for a violation of the provisions of said section 6 of said act of May 5, 1892, as originally enacted, shall hereafter be instituted, and that all proceedings for said violation now pending are hereby discontinued: *Provided*, That no Chinese person heretofore convicted in any court of the States or Territories or of the United States of a felony shall be permitted to register under the provisions of this act; but all such persons who are now subject to deportation for failure or refusal to comply with the act to which this

is an amendment shall be deported from the the United States as in said act and in this act provided, upon any appropriate proceedings now pending or which may be hereafter instituted."

Section 2 of the same act reads in part as follows:

The words "laborer" or "laborers," wherever used in this act, or in the act to which this is an amendment, shall be construed to mean both skilled and unskilled manual laborers, including Chinese employed in mining, fishing, huckstering, peddling, laundrymen, or those engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation.

The term "merchant," as employed herein and in the acts of which this is amendatory, shall have the following meaning and none other: A merchant is a person engaged in buying and selling merchandise, at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant.

Where an application is made by a Chinaman for entrance into the United States on the ground that he was formerly engaged in this country as a merchant, he shall establish by the testimony of two credible witnesses other than Chinese the fact that he conducted such business as hereinbefore defined for at least one year before his departure from the United States, and that during such year he was not

engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant, and in default of such proof shall be refused landing.

BRIEF IN SUPPORT OF PETITION.

The solution of the question here involved rests dominantly upon the construction to be placed upon that portion of section 2 of the act of November 3, 1893, supra, which provides certain evidential requirements in the case of Chinamen applying for admission on the ground that they had been formerly engaged in this country as merchants. The Circuit Court of Appeals in the case at bar has interpreted the provision as manifesting a legislative intent to deny the immigration officials authority to require of such returning Chinamen proof of their original lawful entry. Such interpretation breaks down the whole theory of the previous scheme of Chinese legislation. The treaty of 1880, referred to by this court in its previous opinion, in this case, 241 U. S. 1, 5, and the laws passed prior to the act of 1893, to execute that treaty, contemplated that no Chinaman should be admitted to this country until he produced the specified proofs entitling him to enter. In the case of merchants, the prescribed certificate was the sole proof. Thus at all times prior to the enactment of the act of 1893, containing the provision here in issue, whether entering for the first time, or merely returning from a permissible trip abroad, the Chinaman must produce his certificate at the port of entry. The

only exception to the rule was the Chinese merchant who had been lawfully engaged in mercantile business previous to and at the time of the enactment of the act of 1882 providing for the production of the certificate; and even as to him he must bear the burden of establishing his lawful domicile. Lau Ow Bew, 144 U. S. 47, 58, 60. Thus the question here presented narrows itself to the quaere, Did Congress, in the act of 1893, supra, intend to reverse its previously declared policy of strict exclusion of those not entitled by treaty or statute to come in or reside here? He who asserts that the act of 1893 works such a result must carry the burden of demonstrating it more clearly than can be done by the language employed in that act.

Repeals by implication are never favored and it would take *necessary* implication to repeal the former requirements of the law. If the acts can be construed as making additional requirement it must be so construed unless an irreconcilable inconsistency results.

We come then to consider the act of 1893 which contains the provision that the Circuit Court of Appeals relies upon to sustain its judgment in the case at bar. The act contains only two sections. The first section amends section 6 of the previous act of May 5, 1892, 27 Stat. 25. The amended section, while providing for the registration of resident Chinese laborers and the granting to them of certificates, specifically limits the right of registration to those Chinese "who were entitled to remain in the United

States before the passage of the act" of 1892. The same section also provides:

> And any Chinese person, other than a Chinese laborer, *having a right to be and remain in the United States*, desiring such certificate as evidence of such right, may apply for and receive the same without charge.

This quoted provision would cover, of course, merchants as well as other exempts.

Thus, the previous prohibitions against the right to remain in the country unless the entry was lawful is not only carefully preserved in amended section 6, but it is to be observed that any laborer whose entry was lawful is to be ordered deported if he fails to register, unless such failure grows out of certain causes over which he had no control.

Section 2 of the act of 1893, in the first two paragraphs, enlarges the class of laborers and restricts the class of merchants. And then follows the paragraph which, it is contended, confers a right of entry not theretofore enjoyed. That is to say, that under this provision a returning Chinese merchant need only establish that for a period of one year prior to his departure he "conducted such business as hereinbefore defined." Section 1, and the first two paragraphs of section 2 of this act of 1893, and the previous statutes embraced in the Chinese exclusion legislative policy, forbid reading that portion of section 2 here drawn in issue, as intending either to condone or to forgive an original unlawful entry, or intending to prohibit the immigration officers from

requiring a returning merchant to prove original lawful entry. The reasonable interpretation of this statutory provision, and the one required to bring it into harmony with the statutes in *pari materia*, is that which makes the provision add new conditions of reentry. Theretofore a returning merchant need only produce his certificate. Now he must prove, not only lawful entry, but that at the time of his departure he was an active merchant of a specified character. The Circuit Court of Appeals, however, holds that the question of unlawful entry must be tried out in a deportation proceeding after the Chinaman is allowed to enter; that is to say, that the immigration officers can not determine that question on application to enter. In other words, that a right of reentry intended only for Chinamen who were lawfully in the United States could not be shown to be not applicable to the person asserting a right to it, by showing that he did not possess the essential qualification of an original lawful entry. Therein lies the demonstrable fallacy of that court's ruling. It is not believed that Congress, in the statutory provision here under discussion, has wrought such a result. It is a fundamental principle of statutory construction that courts must avoid that interpretation of statutes which produces such results. *Lau Ow Bew* v. *United States*, 144 U. S. 47, 59, and cases therein cited. The opinion in the case at bar asserts in effect that Congress by one statute has authorized the entry of a Chinaman, and by another statute has provided the means for his immediate deportation after he is permitted to

land. If as claimed the provision of law here in issue manifests the legislative purpose to permit the ingress and egress of Chinamen without regard to the lawfulness of their original entry, then it would be exceedingly doubtful whether the deportation statutes referred to by the Circuit Court of Appeals, furnish authority for ridding the country of a Chinaman thus admitted, solely because his original entry was unlawful. The act of 1893, like its predecessor statutes, shows a plain purpose to make it more, not less, difficult for Chinese aliens to migrate to and become residents of the United States.

As so well said by this court in the present case when it was here on appeal, in referring to the treaty, 241 U. S. 1, 5:

> The "merchant" defined by it does not include petitioner. It was the definition of the status acquired in China, not acquired in the United States, and, having been acquired in China, gave access to the United States and after access freedom of movement as citizens of the most favored nations.

And the provision of the act of 1893 now relied upon by the Circuit Court of Appeals can not be interpreted as conferring the right of ingress and egress upon a merchant who has merely acquired that status in this country through unlawful entry.

It is respectfully submitted that the writ should issue.

ALEX. C. KING,
Solicitor General.
ROBERT P. STEWART,
Assistant Attorney General.

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No. 506.

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

EDWARD WHITE, Commissioner of Immigration,
PETITIONER,
v.
CHIN FONG.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE PETITIONER.

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

EDWARD WHITE, COMMISSIONER OF IMMIGRATION, petitioner,
v.
CHIN FONG.
} No. 506.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE PETITIONER.

STATEMENT.

Chin Fong, the respondent, applied for admission into the United States upon the ground that he had been formerly engaged in this country as a merchant. The immigration officers denied him entry on the ground that his previous original entry in 1897 or 1906 was unlawful, the inference being that he entered surreptitiously across the Canadian border. (Rec. pp. 47, 51.) The discrepancy in the dates of entry and the grounds upon which he was denied entry are thus set forth in the finding of the Commissioner of Immigration (R. p. 43):

> The applicant applied for preinvestigation of his alleged status as a merchant (Form 431), in December, 1911, but his application

was denied by the Seattle office, and an appeal from that decision dismissed by the bureau for the reason that it was satisfactorily shown at that time that the applicant had fraudulently secured his original admission to the United States, it having been claimed by him that he entered this country at or near Niagara Falls, New York, in 1897 on "merchant's papers" sent to him in China by the Young Wah Hong Company at New York. It was first claimed by the applicant, in the present case, that he was admitted at Niagara Falls in 1906, but when confronted with his previous testimony he denied the last-mentioned statement and reiterated the year first mentioned as the date of his original entry, and stated that he was then admitted as a section six Canton merchant on papers secured by him in that city.

Niagara Falls was not a port of entry for Chinese in 1906, and the applicant has not satisfactorily accounted for the present whereabouts of the papers on which he claims to have been admitted, so that it must be concluded that his domicile in this country was unlawful; and as the bureau has sustained the action of the Seattle office in refusing his application for Form 431, the applicant is denied admission and advised of his right of appeal.

The Chinaman thereupon appealed to the Secretary of Labor, who affirmed the excluding decision. (R. p. 30.) He then applied for a writ of habeas

corpus, which was denied. (213 Fed. 288.) He thereupon removed his case to this court on appeal, alleging that the construction of the Chinese treaty was involved. This court, after carefully examining the record, found that claim to be without merit, and ordered the appeal dismissed. (241 U. S. 1.) The Chinaman then filed a new habeas corpus petition in the court below (R. p. 2), alleging in substance, that the immigration officers exceeded their authority in excluding him because of claimed previous original fraudulent entry; that he having established his mercantile status for a period of at least one year prior to his leaving the country, section 2 of the Chinese exclusion act of November 3, 1893 (28 Stat. 7), conferred upon him the right to reenter regardless of whether his previous original entry was lawful or unlawful. The court again denied his petition, and on appeal the Circuit Court of Appeals reversed the judgment, and ordered the discharge of the Chinaman. (258 Fed. 849.)

QUESTION INVOLVED.

The question presented for decision is whether a Chinaman applying for admission into the United States on the ground that he had formerly been engaged in this country as a merchant may be excluded on the sole ground that his previous original entry was illegal.

Section 6 of the act of May 6, 1882, 22 Stat. 58, as amended by act of July 5, 1884, 23 Stat. 115, reads as follows:

> That in order to the faithful execution of the provisions of this act, every Chinese person, other than a laborer, who may be entitled by said treaty or this act to come within the United States, and who shall be about to come to the United States, shall obtain the permission of and be identified as so entitled by the Chinese Government, or of such other foreign Government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such Government.
>
> * * * * *
>
> Such certificate viséed as aforesaid shall be prima facie evidence of the facts set forth therein, and shall be produced to the Chinese inspector in charge of the port in the district in the United States at which the person named therein shall arrive, *and afterward produced to the proper authorities of the United States whenever laufully demanded*, and shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States; but said certificate may be controverted and the facts therein stated disproved by the United States authorities.

Section 9 of the same act reads as follows:

That before any Chinese passengers are landed from any such vessel, the Chinese inspector in charge, or his deputy, shall proceed to examine such passengers, comparing the certificates with the list and with the passengers; and no passenger shall be allowed to land in the United States from such vessel in violation of law.

Section 1 of the act of November 3, 1893, 28 Stat. 7, reads as follows:

That section 6 of an act entitled "An act to prohibit the coming of Chinese persons into the United States," approved May 5, 1892, is hereby amended so as to read as follows:

SEC. 6. And it shall be the duty of all Chinese laborers within the limits of the United States *who were entitled to remain in the United States before the passage of the act to which this is an amendment* to apply to the collector of internal revenue of their respective districts within six months after the passage of this act for a certificate of residence; and any Chinese laborer within the limits of the United States who shall neglect, fail, or refuse to comply with the provisions of this act and the act to which this is an amendment, or who, after the expiration of said six months, shall be found within the jurisdiction of the United States without such certificate of residence, shall be deemed and adjudged to be unlawfully within the United States, and may be arrested by any United States customs official, collector of internal revenue or his deputies, United States marshal or his deputies, and taken before a

United States judge, whose duty it shall be to order that he be deported from the United States, as provided in this act and in the act to which this is an amendment, unless he shall establish clearly to the satisfaction of said judge that by reason of accident, sickness, or other unavoidable cause he has been unable to procure his certificate, and to the satisfaction of said United States judge, and by at least one credible witness other than Chinese, that he was a resident of the United States on the 5th of May, 1892; and if, upon the hearing, it shall appear that he is so entitled to a certificate, it shall be granted upon his paying the cost. Should it appear that said Chinaman had procured a certificate which has been lost or destroyed, he shall be detained and judgment suspended a reasonable time to enable him to procure a duplicate from the officer granting it, and in such cases the cost of said arrest and trial shall be in the discretion of the court; and *any Chinese person, other than a Chinese laborer, having a right to be and remain in the United States*, desiring such certificate as evidence of such right, may apply for and receive the same without charge; and that no proceedings for a violation of the provisions of said section 6 of said act of May 5, 1892, as originally enacted, shall hereafter be instituted, and that all proceedings for said violation now pending are hereby discontinued: *Provided*, That no Chinese person heretofore convicted in any court of the States or Territories or of the United States of a felony shall be permitted to register under the

provisions of this act; but all such persons who are now subject to deportation for failure or refusal to comply with the act to which this is an amendment shall be deported from the the United States as in said act and in this act provided, upon any appropriate proceedings now pending or which may be hereafter instituted.

Section 2 of the same act reads in part as follows:

The words "laborer" or "laborers," wherever used in this act, or in the act to which this is an amendment, shall be construed to mean both skilled and unskilled manual laborers, including Chinese employed in mining, fishing, huckstering, peddling, laundrymen, or those engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation.

The term "merchant," as employed herein and in the acts of which this is amendatory, shall have the following meaning and none other: A merchant is a person engaged in buying and selling merchandise, at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant.

Where an application is made by a Chinaman for entrance into the United States on the ground that he was formerly engaged in this country as a merchant, he shall establish by the testimony of two credible witnesses other

than Chinese the fact that he conducted such business as hereinbefore defined for at least one year before his departure from the United States, and that during such year he was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant, and in default of such proof shall be refused landing.

ARGUMENT.

I.

Chin Fong, the respondent, not within class of merchants covered by section 2 of act of November 3, 1893.

As an introduction to a discussion of the question raised, we repeat here the specific portion of section 2 of the act of November 3, 1893, supra, which respondent contends confers upon him the absolute right of reentry notwithstanding his first entry and residence here may have been unlawful:

> Where an application is made by a Chinaman for entrance into the United States on the ground that he was formerly engaged in this country as a merchant, he shall establish by the testimony of two credible witnesses other than Chinese the fact that he conducted such business as hereinbefore defined for at least one year before his departure from the United States, and that during such year he was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant, and in default of such proof shall be refused landing.

Observe in the first place that the statute here quoted, deals solely with a Chinaman applying to enter "on the ground that he was formerly engaged in this country as a merchant." It therefore becomes necessary to determine what class of Chinamen were entitled to apply for entry on the ground of prior mercantile status in the United States.

1. The treaty with China of November 17, 1880, 22 Stat. 826, and the act of May 6, 1882, 22 Stat. 58, as amended by the act of July 5, 1884, 23 Stat. 115, recognized and preserved the right of Chinese persons then resident in the United States to go and come at will, but no Chinese laborer could thereafter come for the first time to the United States under any condition; and Chinese merchants and other specified exempts thereafter proceeding to the United States for the first time were required to obtain from the Chinese Government a certificate which was made the sole evidence to establish their right of entry into the United States. Thus the treaty and the act of 1882 as amended in 1884, supra, created two methods through which a merchant could obtain admission into the United States, viz (1) by a certificate from the Chinese Government; and (2) by having been a domiciled merchant at or prior to the enactment of the acts of 1882 and 1884. Thus it would be impossible for a Chinaman, like the respondent here, having come into the United States for the first time subsequent to 1882 to transfer himself from the certificate class to the previous mercantile domicile class.

2. In further demonstration of this view of the effect of these early statutes, reference may be made to *Lau Ow Bew* v. *United States*, 144 U. S. 47. In that case Lau Ow Bew, who had been domiciled in this country since 1874, and engaged in business as a merchant, departed for China in 1890, with the purpose of thereafter returning to his home and business here; thereafter in 1891 he did return, but was denied admission by the immigration officials on the ground that he must produce the statutory certificate. This court, after analyzing the treaties and the acts of 1882 and 1884, held that the latter acts did not embrace Lau Ow Bew. The question presented, and its solution, are thus stated by the court (pp. 59 and 61):

> Does the section apply to Chinese merchants, already domiciled in the United States, who, having left the country for temporary purposes, *animo revertendi*, seek to reenter it on their return to their business and their homes?
>
> * * * * *
>
> But Chinese merchants domiciled in the United States and in China only for temporary purposes, *animo revertendi*, do not appear to us to occupy the predicament of persons "who shall be about to come to the United States," when they start on their return to the country of their residence and business. The general terms used should be limited to those persons to whom Congress manifestly intended to apply them, and they would evidently be those who are about to come to the United States for the first time, and, therefore, might

> properly be required to apply to their own government for permission to do so, as also to so identify them as to distinguish them as belonging to the classes who could properly avail themselves of such leave.

Following this decision, and apparently as a result thereof, Congress incorporated in section 2 of the act of November 3, 1893, 28 Stat. 7, the provision upon which the respondent here relies. Interpreting it according to its plain terms, and in harmony with the explanatory history herein recited, the statute now drawn in issue creates no new method of obtaining entry into the United States. It merely takes hold of that class of Chinamen represented by Lau Ow Bew, supra, and specifies the character of additional proof which must thereafter be produced to gain reentry into the country. As Chin Fong, the respondent, here, according to his own claim never entered the country until at least 1897 (R. pp. 6 and 43), he does not fall within the class entitled to make application for entry on the ground of former mercantile status here, and the provision in the act of 1893 upon which he relies has, therefore, no application to him. His sole right to enter must rest upon the production of a certificate or a satisfactory explanation of its loss, and of course he carries the burden of establishing his right of entry. *Chin Yow* v. *United States*, 208 U. S. 8, 13. While Chin Fong claimed to possess a certificate, which was subsequently lost, his testimony was so contradictory as to warrant the conclusion of the Secretary that he had

entered surreptitiously. (R. p. 47.) In such a case this court will not review the facts, but will accept the Secretary's finding as final. *Chin Yow* v. *United States*, supra; *Lem Moon Sing* v. *United States*, 158 U. S. 538; *Tang Tun* v. *Edsell*, 223 U. S. 673, 675.

II.

Conceding arguendo that the statute here drawn in issue embraces the respondent, he has established no right of entry.

Assuming that the statute upon which respondent relies, applies to him, it still remains true that there is nothing in its language conveying any intimation that Congress thereby intended to depart from its previously declared policy of strict exclusion, and create a way through which a Chinaman entering the country in violation of law, might acquire the right to remain, and thereafter depart and return without molestation. That no such purpose is attributable to Congress may be demonstrated by reference to section 1 of the same act which authorized the issuance of certificates of residence only to those Chinese laborers and exempts "having a right to be and remain in the United States." All others were to be deported. It would be strange indeed, in view of these and previous restrictions, and the duty imposed by section 9 of the act of May 6, 1882, as amended in 1884, supra, upon the immigration officers to prevent Chinese persons from entering in violation of law, to now construe the language relied upon by respondent, as manifesting the intention of Congress to tie the hands of the immigration officials

and forbid them going into the question of the legality of respondent's original entry. It is impossible, without working an absurd result, which should always be avoided, *Lau Ow Bew* v. *United States*, 144 U. S. 47, 59, to hold that in the provision under consideration, Congress was dealing with merchants other than those already lawfully entitled to enter. In other words, the statute merely adds to the existing duty of the immigration officials an added evidential requirement. Such officials must now not only determine in the first instance whether the Chinaman is entitled to exercise the privilege of ingress and egress, but they must require this new statutory proof. To recapitulate, the officials must satisfy themselves that the Chinaman either possesses a certificate or was a merchant domiciled here at the time of the enactment of the 1882 statute, and then require from the Chinaman proof of mercantile status prior to departure as specified in the 1893 statutory provision.

III.

Additional reasons forbidding adoption of respondent's claimed construction of 1893 statutory provision.

1. It should also be borne in mind that Chinese aliens must not only meet the tests for admission laid down in the Chinese Exclusion laws, but likewise the tests prescribed by the general immigration laws. (*Wong You* v. *United States*, 223 U. S. 67.) But if respondent's claim that proof of mercantile status for a year prior to departure is the sole test of reentry, then the fact that the Chinaman when

applying to reenter was an epileptic, consumptive, felon, anarchist, polygamist, or mentally or physically defective, could not be considered by the immigration officials, and exclusion ordered as required by the immigration laws.

2. Moreover, if Congress, in the provision relied upon, has authorized the reentry of respondent regardless of his original illegal entry, serious doubt would exist concerning the right to institute deportation proceedings after entry as suggested by the Circuit Court of Appeals in this case. No statute, whose plain terms do not so require, should be construed to permit the entry of an alien who would immediately become subject to deportation for a prior unlawful entry. Such a legislative absurdity is unthinkable. The only reasonable view of the statute is that which asserts that Congress has made it more difficult, not easier, for Chinese merchants to gain entry into the country. Such view harmonizes the present provision with the whole scheme of Chinese legislation.

IV.

It is respectfully submitted that the Secretary possessed the power to deny entry to respondent on the ground of original illegal entry, and therefore the judgment below should be reversed.

ROBERT P. STEWART,
Assistant Attorney General.
HARRY S. RIDGELY,
Attorney.

MARCH, 1920.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1918

No. 599.

EDWARD WHITE, COMMISSIONER OF IMMIGRATION, PETITIONER,

vs.

CHIN BONG.

BRIEF FOR DEFENDANT IN ERROR.

JACKSON H. RALSTON,
GEORGE W. FORT,
Attorneys for Defendant in Error.

THE LAW REPORTER PRINTING COMPANY, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1919.

No. 506.

EDWARD WHITE, COMMISSIONER OF IMMIGRATION, PETITIONER,

vs.

CHIN FONG.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

Chin Fong, the defendant in error, is an alien Chinese person seeking to re-enter the United States after a temporary absence in China. He claims the right to re-enter on the ground that he is returning to a previously established commercial domicile in this country. The evidence in the record fully supports his claim that he was a merchant in New York City for a period of one year prior to his departure in 1912 on a temporary trip to China (pages 31 and 32, record), and there is no intimation or suggestion by the immigration officials that he was not such merchant (pages

32, 43 and 51, record), but he was denied admission upon his return, about one year thereafter, by the Commissioner of Immigration at San Francisco, and the decision was affirmed upon appeal to the Secretary of Labor, on the ground that he had not satisfactorily established that his original entry (apparently in 1896 or 1897) was lawful.

The adverse decision of the Commissioner of Immigration is set forth on page 11 of the record and is as follows:

FINDING AND DECREE.

> The applicant applied for pre-investigation of his alleged status as a merchant (Form 431), in December, 1911, but his application was denied by the Seattle office, and an appeal from that decision dismissed by the bureau for the reason that it was satisfactorily shown at that time that the applicant had fraudulently secured his original admission to the United States, it having been claimed by him that he entered this country at or near Niagara Falls, New York. in 1897, on "merchant's papers" sent to him in China by the Young Wah Hong Company at New York. It was first claimed by the applicant, in the present case, that he was admitted at Niagara Falls in 1906, but when confronted with his previous testimony he denied the last mentioned statement and reiterated the year first mentioned as the date of his original entry, and stated that he was then admitted as a section six Canton merchant on papers secured by him in that city.
>
> Niagara Falls was not a port of entry for Chinese in 1906, and the applicant has not satisfactorily accounted for the present whereabouts of the papers on which he claims to have been admitted, so that it must be concluded that his domicile in this country was unlawful; and as the bureau has sustained the action of the Seattle office in refusing his application for Form 431, the applicant is denied admission and advised of his right of appeal.
>
> Dated this 6th day of February, 1914.
>
> (Signed) SAMUEL W. BACKUS,
> *Commissioner.*

The decision of the Acting Secretary of Labor, dismissing the appeal (page 11, record), is as follows:

Washington, March 6, 1914.

IN RE CASE OF CHIN FONG.

I am satisfied that the action recommended by the bureau is the correct one in this case.

The original entry of this man was obtained by fraud. He can not predicate any right whatever upon the basis of fraud. The fact that he has been permitted to remain in this country constitutes no waiver of the right to deport him, and the fact that the Government has not heretofore affirmatively exercised the authority to deport him, while it amounts to tentative permission to remain here, does not preclude or estop the Government from exercising its authority to deport or deny admission at any time. A different question would be presented were the facts such that it did not appear that the alien's original entry was fraudulent. No business he might engage in nor length of residence here can cure the fraud perpetrated by him in gaining admission in the first instance.

This case appears to be quite fairly within the Mack Fock decision, which, in my opinion, is correct.

The recommendation that admission be denied is approved.

J. B. DINSMORE,
Acting Secretary.

Thereupon a petition was filed in the District Court for a writ of habeas corpus, which was denied. (213 Fed. 288.) An appeal was taken to this court upon the mistaken theory that the construction of a treaty was involved and the appeal was dismissed for want of jurisdiction. (241 U. S. 1.) Upon permission of the lower court, Chin Fong again filed a petition for writ of habeas corpus, basing his claim for relief upon rights vested by the statute. (P. 2, record.) The petition was denied (page 14, record) and on appeal

the Circuit Court of Appeals reversed the judgment of the lower court with direction to discharge the appellant from custody. (Pp. 27-33, record.)

Chinese Merchants Having a Commercial Domicile in the United States and Their Rights Under the Treaties With China and the Exclusion Laws.

Before proceeding to discuss the main point involved in this case, a brief review of the treaties with China, and the exclusion laws, is deemed essential. The treaty with China of 1880, and the laws enacted by Congress in pursuance thereof, were directed solely against the coming of Chinese *laborers*. (Chew Heong v. United States, 112 U. S. 536, 545, 28 L. ed. 770, 773; Chinese Exclusion Cases, 130 U. S. 581, 597, 32 L. ed. 1068, 1072.) The defendant in error is not a laborer, and during more than twenty years' residence in this country, he has always followed an exempt occupation.

The treaty between the United States and China, concluded July 28, 1868 (16 Stat. 739), which is in full force and effect, except in so far as it is modified by the supplemental treaty of 1880 (22 Stat. 826), provides as follows:

> Article V. The United States of America and the Emperor of China cordially recognize the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects, respectively, from the one country to the other, for purposes of curiosity, or trade, or as permanent residents. * * *
>
> Article VI. Citizens of the United States visiting or residing in China shall enjoy the same privileges, immunities, or exemptions in respect to travel or resi-

> dence as may there be enjoyed by the citizens or subjects of the most favored nation; and, reciprocally, Chinese subjects visiting or residing in the United States, shall enjoy the same privileges, immunities, and exemptions in respect to travel or residence, as may there be enjoyed by the citizens or subjects of the most favored nation.

The preamble to the treaty of 1880, *supra*, after referring to the treaties of 1858 and 1868, and the embarrassment caused the United States by the constantly increasing immigration of Chinese *laborers*, sets forth a desire to negotiate a modification of the existing treaties "which shall not be in direct contravention of their spirit." Article I of said treaty provides that the government of the United States "may regulate, limit or suspend such coming or residence" of Chinese *laborers*. Article II of said treaty provides, as follows:

> Chinese subjects, whether proceeding to the United States as teachers, students, merchants, or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to the citizens and subjects of the most favored nation.

The first law enacted by Congress to carry into effect the provisions of the supplemental treaty of 1880, was the act of May 6, 1882 (22 Stat. 58), which was shortly thereafter amended by the act of July 5, 1884 (23 Stat. 115). The first section of this act made it unlawful, for a period of ten years, "for any Chinese *laborer* to come from any foreign port or place, or having so come to remain within the United States." The other sections of the act relate to and contain provisions for the proper enforcement of the

provisions of the first section. Section 6 provides that "in order to the faithful execution of the provisions of this act, every Chinese person, other than a laborer, who may be entitled by said treaty or this act to come within the United States, and who shall be about to come to the United States," shall obtain a certificate from the Chinese government, or such other foreign government of which at the time such Chinese person is a subject, showing, among other things, "that such person is entitled by this act to come within the United States." Under section 9 no Chinese person is permitted to land without producing the certificate required by said act. A similar provision appears in section 12 regarding Chinese persons arriving by land, and a further provision that—

> Any Chinese person found unlawfully within the United States shall be caused to be removed therefrom to the country from whence he came, and at the cost of the United States, after being brought before some justice, judge, or commissioner of a court of the United States and found to be one not lawfully entitled to be or to remain in the United States.

Section 13 of the act of September 13, 1888 (25 Stat. 476) provides, as follows:

> That any Chinese person, or person of Chinese descent, found unlawfully in the United States, or its Territories, may be arrested upon a warrant issued upon a complaint under oath, filed by any party on behalf of the United States, by any justice, judge, or commissioner of any United States court, returnable before any justice, judge, or commissioner of a United States court, or before any United States court, and when convicted, upon a hearing, and found and adjudged to be one not lawfully entitled to be or remain in the United States, such person shall be removed from the United States to the country whence he came.

> But any such Chinese person convicted before a commissioner of a United States court may, within ten days from such conviction, appeal to the judge of the district court for the district.

The foregoing section was amended by act of March 3, 1901 (31 Stat., 1093), as follows:

> That no warrant of arrest for violations of the Chinese exclusion laws shall be issued by the United States commissioners excepting upon the sworn complaint of a United States district attorney, assistant United States district attorney, collector, deputy collector, or inspector of customs, immigration inspector, United States marshal, or deputy United States marshal, or Chinese inspector, unless the issuing of such warrant of arrest shall first be approved or requested in writing by the United States district attorney of the district in which issued.

ARGUMENT.

I.

Section 2 of the Act of November 3, 1893, Prescribes the Sole Evidence Which May be Demanded of a Returning Merchant Under the Exclusion Laws.

It will be observed that section 6 is the only part of the exclusion laws, hereinbefore referred to, regulating the entry of person of the *exempt* class, and this section relates only to the *original* entry of such Chinese persons. Neither the act of 1882 as amended in 1884, nor the act of September 13, 1888 (25 Stat., 476), contain any provision for the departure or return of Chinese merchants domiciled in the United States, although all of said acts set forth terms and conditions for the re-entry of Chinese laborers. Notwithstanding these facts, the collector at San Francisco denied admission to a Chinese merchant domiciled in this country and returning from a temporary visit to China, on the sole

ground that he failed and neglected to produce the certificate of the Chinese government mentioned in said section 6. The case came before this court (Lau Ow Bew, 144 U. S., 47, 36 L. ed., 340), and it was held that by our treaty with China, Chinese merchants domiciled in the United States have and are entitled to exercise the right of free egress and ingress and all other rights, privileges and immunities enjoyed in this country by the citizens or subjects of the most favored nation. We quote from the opinion of the court:

> By general international law, foreigners who have become domiciled in a country other than their own acquire rights and must discharge duties in many respects the same as possessed by and imposed upon the citizens of that country, and no restriction on the footing upon which such persons stand by reason of their domicile of choice, or commercial domicile, is to be presumed; while by our treaty with China, Chinese merchants domiciled in the United States, have, and are entitled to exercise, the right of free egress and ingress, and all other rights, privileges, and immunities enjoyed in this country by the citizens or subjects of the "most favored nation."
>
> There can be no doubt, as was said by Mr. Justice Harlan, speaking for the court, in Chew Heong vs. United States, 112 U. S., 536, 549, that "since the purpose avowed in the act, was to faithfully execute the treaty, any interpretation of its provisions would be rejected which imputed to Congress an intention to disregard the plighted faith of the government, and, consequently, the court ought, if possible, to adopt that construction which recognized and saved rights secured by the treaty."
>
> Tested by this rule, it is impossible to hold that this section was intended to prohibit or prevent Chinese merchants, having a commercial domicile here, from leaving the country for temporary purposes and then returning to and re-entering it, and yet such would be its effect if construed as contended for on behalf of appellee.

This court having determined in said case that the rights of free egress and ingress of Chinese merchants domiciled in this country were guaranteed under the treaty with China, and that said section 6 did not apply to Chinese merchants already domiciled in the United States, it was apparently considered by Congress that rules should be laid down applicable to the re-entry of such persons, and, thereafter, November 3, 1893, an act was passed (28 Stat., 7), the second section of which contains the following provision:

> Where an application is made by a Chinaman for entrance into the United States on the ground that he was formerly engaged in this country as a merchant, he shall establish by the testimony of two credible witnesses other than Chinese the fact that he conducted such business as hereinbefore defined for at least one year before his departure from the United States, and that during such year he was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant, and in default of such proof shall be refused landing.

The foregoing is the only provision in the exclusion laws bearing upon the question of re-entry of Chinese merchants domiciled in this country. This section in no way restricted or abridged any of the rights of a merchant under the treaty. It first defined the term "merchant" and then set forth in explicit terms the evidence which should be required to establish the fact that such Chinese person was formerly engaged in this country as a merchant. No other conditions were attached to the re-entry. No authority was granted to the executive branch of the government to determine whether or not the original entry was lawful. Another section of the statutes provided for the ascertainment of this fact in a different procedure and before a different branch of the government.

It is asserted in the brief on behalf of petitioner (page

11) that said section 2, above quoted, "merely takes hold of that class of Chinamen represented by Lau Ow Bew, *supra*," and is not applicable to this defendant. This assertion is in direct conflict with the uniform ruling of the Department of Labor. Under the department's construction of said section 2, all merchants domiciled in this country on applying for readmission, or the admission of their wives and children, must produce the evidence therein required. See subdivision 11 of rule 15, of the Department of Labor, set forth on page 28 of the record. Subdivision 2 of rule 9, relating to the admission of wives and children of exempts, contains the following provision:

> If the husband or father is domiciled in the United States, evidence shall be required concerning him of the character specified by section 2 of the act approved November 3, 1893, to establish the right of a domiciled merchant to readmission after temporary absence from the United States.

This brings us to the point where the defendant in error contends that the executive branch of the government has exceeded its authority under the statute. There is nothing in this statute which vests the executive officers with power to investigate and determine whether such returning merchant legally entered the United States, perhaps many years ago. Congress has definitely fixed the requirements of such re-entry and it is not within the power of administrative officers to add to or substract from the congressional rule. The original entry is a fact entirely extraneous to the determination of the mercantile status. Chin Fong may have entered the country as a merchant, as he insists that he did, or as a laborer, or surreptitiously. The manner of original entry was entirely ignored by Congress and doubtless for the reason that existing laws provided for the determination of this question in a different proceeding, before a different tribunal, and, apparently the legislative

branch of the government in its wisdom did not consider it advisable to deprive such person of an acquired domicile, with the resulting loss and injury to property rights and interests acquired in this country during such domicile, without giving him the benefit of a judicial hearing with its safeguards. See section 12 of the act of May 6, 1882 (22 Stat., 581), as amended by act of July 5, 1884 (23 Stat., 115); section 13 of the act of September 13, 1888 (25 Stat., 476); section 3 of the act of March 3, 1901 (31 Stat., 1093); United States vs. Woo Jan, 245 U. S., 552, 62 L. ed., 466.

The defendant in error contends that the exercise of these disputed powers is not the result of statutory construction, but really amounts to legislation, which is a function reserved for Congress, and not conferred upon the immigration authorities. In the case of Morrill vs. Jones (106 U. S., 466, 27 L. ed., 267), this court in an opinion delivered by Mr. Chief Justice Waite, held:

> The Secretary of the Treasury can not by his regulation alter or amend a revenue law. All he can do is to regulate the mode of proceeding to carry into effect what Congress has enacted. In the present case, we are entirely satisfied the regulation acted upon by the collector was in excess of the power of the secretary. The statute clearly includes animals of all classes. The regulations seek to confine its operation to animals of "superior stock." This is manifestly an attempt to put into the body of the statute a limitation which Congress did not think it necessary to prescribe. Congress was willing to admit, duty free, all animals specially imported for breeding purposes; the secretary thought this privilege should be confined to such animals as were adapted to the improvement of breeds already in the United States. In our opinion, the object of the secretary could only be accomplished by an amendment of the law. That is not the office of a treasury regulation.

In the case of the United States v. George (228 U. S. 14, 57 L. ed. 712), where a regulation of the Land Department was under consideration, Mr. Justice McKenna, speaking for the court, said:

> It will be observed, therefore, that the claimant was required to testify as other witnesses. In other words, three witnesses were required; section 2291 requires two only, and, as we have said, points out what proof, in addition, the claimant himself shall give. It is manifest that the regulation adds a requirement which that section does not, and which is not justified by section 2246. To so construe the latter section is to make it confer unbounded legislative powers. What, indeed, is its limitation? If the Secretary of the Interior may add by regulation one condition, may he not add another? If he may require a witness or witnesses in addition to what section 2291 requires, why not other conditions, and the disposition of the public lands thus be taken from the legislative branch of the government and given to the discretion of the Land Department?

After further consideration of this question, the court quotes from the opinion in the case of the United States v. United Verde Copper Company (196 U. S. 207, 49 L. ed. 449), as follows:

> If rule 7 (the regulation involved) is valid, the Secretary of the Interior has power to abridge or enlarge the statute at will. If he can define one term, he can another. If he can abridge, he can enlarge. Such power is not regulation; it is legislation.

The defendant in error was required by a regulation of the Department of Labor, before he could be re-admitted, to establish a fact not connected with his status as a merchant, and which the statute did not require him to establish in a proceeding of this kind, nor before the executive branch of the government, that is, that he was "lawfully

entitled to be and remain in the United States." Circuit Judge Gilbert, in the case of Leong Youk Tong (90 Fed. 648), having under consideration a similar question, said:

> If there has been a decision in this case such as the statute contemplates, the decision is final, and can be reversed only on appeal to the Secretary of the Treasury. This court has no authority, by writ of habeas corpus or otherwise, to review it. Lem Moon Sing v. United States, 158 U. S. 538, 15 Sup. Ct. 967. The courts have interfered only in cases where the applicant for admission was about to be deported under an order which denied him a hearing, or denied his right of appeal (In re Gottfried, 89 Fed. 9; In re Gin Fung, 89 Fed. 153; In re Monaco, 86 Fed. 117); and in cases where he has been denied the right to land for reasons which the law does not recognize as ground for his exclusion (In re Kornmehl, 87 Fed. 314). If, in this case the collector had in fact decided, as was indicated in his verbal statement to the petitioner's counsel, that the petitioner was a merchant, and, as such, entitled to admission into the United States, but that he was denied admission for some other reason not connected with his status as a merchant and not by statute or treaty made a ground for exclusion, the order of deportation would undoubtedly be void. Such appeared to be the facts as they were set forth in the petition for the writ.

II.

Exclusion of a Domiciled Merchant is Equivalent to Expulsion.

To exclude a domiciled merchant returning from a temporary visit abroad is equivalent to expulsion. Congress has made a clear distinction in all exclusion laws between exclusion and expulsion. The executive branch of the government is given exclusive jurisdiction under said laws to exclude, but no jurisdiction whatever to expel. If a Chinese person is found in the United States in violation of the exclusion laws, he can only be expelled after a judicial

hearing (United States v. Woo Jan, 245 U. S. 552, 62 L. ed. 466), if he is not otherwise chargeable with some offense under the Immigration Law. (Act of February 5, 1917, 39 Stat. 874.) Thus, if the executive branch of the government denies admission to a returning merchant on any grounds other than failure to establish his mercantile status as provided in said section 2 (act of November 3, 1893, *supra*), it is in fact expelling him from the country without the judicial hearing to which he is entitled, and accomplishing indirectly what it has no authority to do directly. It is only a question of time until every Chinese merchant will make a temporary visit to the country of his birth. If the executive branch of the government can deny him re-entry on the ground that his original entry was in violation of the law, this procedure might always be used, and no Chinese person, no matter how long domiciled in the country, would be given the formal procedure of a judicial hearing with its safeguards. If Congress intended to change the existing law and take away the jurisdiction of the courts to hear and determine the question of the lawful residence of Chinese merchants and vest this jurisdiction in the executive branch, there is no reason why it should not have said so in express terms by adding to said section 2 "and he shall establish that his original entry was lawful," or words to this effect. (See Federal Statutes Annotated, 2d ed., vol. 1, page 41, and cases cited.)

That Congress did not confer such jurisdiction on the executive branch of the government under the exclusion laws, we think is made clear from section 19 of the Immigration Law (act of February 5, 1917, 39 Stat. 874), when Congress for the first time conferred a limited jurisdiction on the Department of Labor to take into custody and deport Chinese persons without a judicial hearing. Said section provides that "at any time within five years after entry * * * any alien who shall have entered or who shall be

found in the United States in violation of this act, or *in violation of any other law of the United States,* * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported." (Italics ours.) The italicized phrase undoubtedly includes the Chinese exclusion laws. The jurisdiction of the Secretary of Labor under the Immigration Law to deport an alien who shall have entered or who shall be found in the United States in violation of law, is expressly limited to a period of five years after entry, and is not applicable to the defendant who has been a merchant in this country for a much longer period, and is charged with no offense under the Immigration Law for which he may be summarily deported by the Secretary of Labor. This act shows the full extent of the authority that Congress was willing to grant to the executive branch of the government to deport an alien found in the United States in violation of the exclusion laws. These two laws would be inconsistent if the executive branch of the government has authority under the exclusion laws to exclude a Chinese merchant, without regard to the length of time he had been domiciled in this country, and who, in the exercise of his right under the treaty of free egress and ingress departed for temporary purposes, while under the Immigration Law the jurisdiction of the Secretary of Labor over the same person and for the same offense is expressly limited to a period of five years after entry.

The defendant claims that his entry into the United States was in a perfectly legal manner and there is no affirmative evidence to the contrary. The fact that the defendant remained in this country for a year after the Secretary of Labor reached the conclusion that he was unlawfully here, and no proceedings for his deportation were instituted, shows a lack of faith in the conclusions reached on this point. (United States v. Lee You Wing, 211 Fed. 939, 941.) But we do not think this point material in the consideration of the question here involved. It would seem

that a merely surreptitious entry may be cured by long residence in this country. (Gin Dock Sue v. United States, 245 Fed. 308.) However this may be, it is not necessary for us to contend, in our view of the case, on behalf of the defendant that either the treaties with China or the act of 1893, *supra*, confer any rights upon a merchant who has acquired that status in this country through unlawful entry. Our contention is that, having acquired the status of a merchant domiciled in this country, he is entitled to go and come of his own free will and accord, and should "be accorded all the rights, privileges, immunities and exemptions which are accorded to the citizens and subjects of the most favored nation," until proceeded against in a court of the United States in the manner provided by the statute, "and found and adjudged to be one not lawfully entitled to be or remain in the United States."

III.

Congress has made ample provision for ridding the country of Chinese persons who are unlawfully in the United States, and there seems to be no ground for the suggestion to the contrary contained in petitioner's brief (page 14). If, at any time within five years after entry, any Chinese person is found in the United States in violation of law, he may be summarily deported by the Secretary of Labor under section 19 of the Immigration Law, *supra*. If more than five years have elapsed since his entry, he may be proceeded against in the United States courts under section 13 of the act of September 13, 1888, *supra*, so there is ample provision under the law to deport such person without limit to the time he has lived in this country.

It is respectfully submitted that the judgment below should be affirmed.

Respectfully submitted,

JACKSON H. RALSTON,
GEORGE W. HOTT,
Attorneys for Defendant in Error.

dissent.

WHITE, COMMISSIONER OF IMMIGRATION FOR THE PORT OF SAN FRANCISCO, *v.* CHIN FONG.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 506. Argued April 22, 1920.—Decided May 17, 1920.

When a Chinaman seeking to reënter this country on the ground that he was formerly engaged here as a merchant presents due evidence of his right as prescribed by the Act of November 3, 1893, c. 14, 28 Stat. 7, the immigration officials have no authority under the Exclusion Laws to ignore such evidence and exclude him upon the ground that his original entry was in violation of them. P. 91.

The Exclusion Laws provide a judicial hearing to determine the liability to deportation in such cases and a mere executive order of exclusion is void. P. 92.

258 Fed. Rep. 849, affirmed.

THE case is stated in the opinion.

Mr. Assistant Attorney General Stewart, with whom *Mr. H. S. Ridgely* was on the brief, for petitioner.

Mr. Jackson H. Ralston, with whom *Mr. George W. Hott* was on the brief, for respondent.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Certiorari to review a judgment of the Court of Appeals discharging respondent from the custody of the Commissioner of Immigration, he holding respondent for deportation as a Chinese person not entitled to be in the United States. 258 Fed. Rep. 849. The judgment of the Court of Appeals reversed that of the District Court, the latter court having remanded respondent to the custody of the Commissioner for deportation.

The evidence establishes the fact that respondent entered the United States as a merchant and was such at a fixed place of business for at least a year before his departure for China and that his stay in China was intended to be temporary. He hence contends that the Commissioner, as representing the executive branch of the Government, had no authority to determine that his original entry was unlawful. This contention the District Court ruled against and the Circuit Court of Appeals ruled in favor of, and constitutes the question in the case. The Circuit Court of Appeals, by Circuit Judge Morrow, passing upon it said: "The Acting Secretary of Labor, in approving the decision of the Commissioner of Immigration, did so upon the ground that 'the original entry of this man [respondent] was obtained by fraud;' but this was not the question submitted to the Commissioner of Immigration or to the Secretary of Labor for

decision. The question was not whether the applicant was legally admitted in 1896–1897, or 1906. The question was whether he had been a merchant in the United States at least one year before his departure from the United States in 1912 (*Chin Fong* v. *Backus*, 241 U. S. 1, 5)," and upon that question, it was decided that, "the evidence was all one way, establishing beyond controversy all the facts required by the statute and the rule of the Department of Labor."

The conclusion was that the Commissioner did not consider this evidence or pass upon it, but deciding that respondent's original entry was fraudulent, ordered his deportation. In other words, it was held that the Commissioner ignored the question presented to him and the evidence pertaining to it, reviewed and reversed the judgment of another time and tribunal, took away the right that had been exercised under it and which gave the assurance that respondent could go to China and return again. The order of deportation was, therefore, declared to be void. For this the court cited the case of *Chin Fong* v. *Backus*, *supra*, and the various statutes applicable to the exclusion of Chinese persons from entry into the United States. 22 Stat. 58; 23 Stat. 115; 25 Stat. 476; 31 Stat. 1093, and the Act of November 3, 1893, c. 14, 28 Stat. 7.

In the case of *United States* v. *Woo Jan*, 245 U. S. 552, we had occasion to consider the difference between the situation of a Chinese person in the United States, and one seeking to enter it; and held that the former was entitled to a judicial inquiry and determination of his rights, and that the latter was subject to executive action and decision. We think the distinction is applicable here, and that one who has been in the United States and has departed from it with the intention of returning, is entitled under existing legislation to have his right to do so judicially investigated with "its assurances and sanc-

tions," as contrasted with the discretion which may prompt or the latitude of judgment which may be exercised in executive action.

And such is the provision of the Act of November 3, 1893, 28 Stat. 7. It is there provided that a Chinaman who applies for admission into the United States on the ground that he was formerly engaged therein as a merchant, must establish the fact by two credible witnesses, other than Chinese, that he was such at least one year before his departure from the United States, and had not engaged during such year in any manual labor except what was necessary in the conduct of his business.

The Government appeals against the explicit words of the provision to the purpose of the exclusion laws, which is, it is said, to keep the country free from undesirable Chinese, or if they fraudulently enter, to expel them, and it is insisted that it would be a perfunctory execution of the purpose to let one in who may be immediately put out again. That intention, it is urged, should not be ascribed to the laws, and in emphasis it is said, "such a legislative absurdity is unthinkable." But this overlooks the difference in the security of judicial over administrative action, to which we have adverted, and which this court has declared, and,in the present case, the right that had been adjudged and had been exercised in reliance upon the adjudication.

Judgment affirmed.